BEST COPY
AVAILABLE

UN

UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/70/Add.7
27 March 1995

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1991

Addendum

NETHERLANDS*

[6 February 1995]

---

* For the initial report submitted by the Government of the Netherlands see documents CCPR/C/10/Add.3 and Add.5, and for its consideration, see CCPR/C/SR.321, 322, 325 and 326, or Official Records of the General Assembly, Thirty-seventh session, Supplement No. 40 (A/37/40), paragraphs 92 to 133. For the second periodic report of the Netherlands, see documents CCPR/42/Add.6 and for its consideration, see CCPR/C/SR.861-864, or Official Records of the General Assembly, Forty-fourth session, Supplement No. 40 (A/44/40), paragraphs 190 to 232.

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	7
Structure of the Kingdom of the Netherlands	3 - 5	7
I. THE NETHERLANDS (EUROPEAN PART OF THE KINGDOM)	6 - 220	8
A. Introduction	6 - 17	8
B. Implementation of specific provisions of the Covenant	18 - 220	11
Article 1 - Right to self-determination	18 - 19	11
Article 2 - Non-discrimination	20	11
Article 3 - Equal rights of men and women	20	11
Article 4 - Restrictions on derogations from obligations under the Covenant	21	11
Article 5 - Prohibition of narrow interpretation of the Covenant	22 - 25	11
Article 6 - Right to life	26 - 31	12
Article 7 - Prohibition of torture	32 - 37	13
Article 8 - Prohibition of slavery	38 - 48	14
Article 9 - Right to liberty and security of person	50 - 62	17
Article 10 - Treatment of persons deprived of their liberty	63 - 76	19
Article 11 - Prohibition of detention for inability to fulfil a contractual obligation	77	22
Article 12 - Right to leave one's country	78 - 92	22
Article 13 - Prohibition of expulsion without legal guarantees	93 - 101	26
Article 14 - Entitlement to a fair and public hearing	102 - 122	28

CONTENTS (continued)

	Paragraphs	Page
Article 15 - Principle of nulla poena sine praevia lege poenali	123	32
Article 16 - Right to recognition as a person before the law	124	32
Article 17 - Right to privacy	125 - 132	32
Article 18 - Freedom of religion and belief	133 - 138	34
Article 19 - Freedom of expression	139 - 150	35
Article 20 - Prohibition of war propaganda	151 - 152	38
Article 21 - Right of assembly	153 - 154	38
Article 22 - Freedom of association	155 - 157	39
Article 23 - Protection of the family	158 - 160	39
Article 24 - Protection of the child	161 - 169	41
Article 25 - Right to take part in public affairs	170 - 176	43
Article 26 - Prohibition of discrimination	177 - 212	44
Article 27 - Minorities	213 - 220	50
II. THE NETHERLANDS ANTILLES	221 - 393	52
A. Introduction	221 - 225	52
B. Implementation of specific provisions of the Covenant	226 - 393	52
Article 1 - Right to self-determination	226 - 231	52
Article 2 - Non-discrimination	232 - 243	53
Article 3 - Equal rights of men and women	244 - 252	56
Article 4 - Restrictions on derogations from obligations under the Covenant	253 - 257	57
Article 5 - Prohibition of narrow interpretation of the Covenant	258 - 262	58
Article 6 - Right to life	263 - 267	59

CONTENTS (continued)

	Paragraphs	Page
Article 7 - Prohibition of torture	268 - 278	59
Article 8 - Prohibition of slavery	279 - 280	61
Article 9 - Right to liberty and security of the person	281 - 292	62
Article 10 - Treatment of persons deprived of their liberty	293 - 306	64
Article 11 - Prohibition of detention for inability to fulfil a contractual obligation	307	67
Article 12 - Right to leave one's country	308	67
Article 13 - Prohibition of expulsion without legal guarantees	309 - 316	67
Article 14 - Entitlement to a fair and public hearing	317 - 331	69
Article 15 - Principle of *nulla poena sine praevia lege poenali*	332	71
Article 16 - Right to recognition as a person before the law	333 - 334	71
Article 17 - Right to privacy	335 - 341	71
Article 18 - Freedom of religion and belief	342 - 347	73
Article 19 - Freedom of expression	348	73
Article 20 - Prohibition of war propaganda	349	74
Article 21 - Right of assembly	350 - 351	74
Article 22 - Freedom of association	352 - 355	74
Article 23 - Protection of the family	356	75
Article 24 - Protection of the child	357 - 363	75
Article 25 - Right to take part in public affairs	364 - 366	76

CONTENTS (continued)

		Paragraphs	Page
	Article 26 - Prohibition of discrimination . . .	367 - 392	77
	Article 27 - Minorities	393	82
III.	ARUBA	394 - 580	83
	A. Introduction	394 - 405	83
	B. General information on Aruba	406 - 425	84
	C. Implementation of specific provisions of the Covenant	426 - 580	95
	Article 1 - Right to self-determination	427 - 430	95
	Article 2 - Non-discrimination	431 - 446	96
	Article 3 - Equal rights of men and women . . .	447 - 451	99
	Article 4 - Restrictions on derogations from obligations under the Covenant . .	452 - 454	99
	Article 5 - Prohibition on narrow interpretation of the Covenant . .	455 - 462	100
	Article 6 - Right to life	463 - 470	101
	Article 7 - Prohibition of torture	471 - 480	102
	Article 8 - Prohibition of slavery	481 - 486	104
	Article 9 - Right to liberty and security of person	487 - 495	105
	Article 10 - Treatment of persons deprived of their liberty	496 - 504	106
	Article 11 - Prohibition of detention for inability to fulfil a contractual obligation	505 - 508	109
	Article 12 - Right to leave one's country . . .	509 - 512	109
	Article 13 - Prohibition of expulsion without legal guarantees	513 - 517	110
	Article 14 - Entitlement to a fair and public hearing	518 - 528	112

CONTENTS (continued)

	Paragraphs	Page
Article 15 - Principle of nulla poena sine praevia lege poenali	529 - 530	115
Article 16 - Right to recognition as a person before the law	531	115
Article 17 - Right to privacy	532 - 537	115
Article 18 - Freedom of religion and belief . .	538 - 541	117
Article 19 - Freedom of expression	542 - 544	117
Article 20 - Prohibition of war propaganda . . .	545 - 546	118
Article 21 - Right of assembly	547 - 549	118
Article 22 - Freedom of association	550 - 554	119
Article 23 - Protection of the family	555 - 557	119
Article 24 - Protection of the child	558 - 565	120
Article 25 - Right to take part in public affairs	566 - 572	121
Article 26 - Prohibition of discrimination . . .	573 - 574	122
Article 27 - Minorities	575 - 580	122

Introduction

1. In pursuance of article 40 of the International Covenant on Civil and Political Rights, which entered into force with respect to the Kingdom of the Netherlands on 11 March 1979, the present report is submitted in accordance with the decision and guidelines on periodic reports adopted by the Human Rights Committee on 22 and 27 July 1981. This third periodic report takes into account the discussion of the initial and second reports in the Committee, and the progress made on national legislation and practice with regard to the implementation of the individual articles of the Covenant. The report covers the period September 1986 (the date the second periodic report was due) to January 1991.

2. The subjects which were dealt with under the articles in the previous report and which remained unchanged in the period with which this report deals are not commented upon.

Structure of the Kingdom of the Netherlands

3. The present constitutional structure of the Kingdom of the Netherlands dates back to 1954, when, after several years of study, discussion and negotiation, it was decided by the Netherlands, Suriname and the Netherlands Antilles (then including Aruba) to establish a new constitutional order under which they (according to the Charter for the Kingdom, the constitutional document which was promulgated) "will conduct their internal affairs autonomously and in their common interests on a basis of equality and will accord each other reciprocal assistance". Thus the Kingdom, while remaining one sovereign entity under international law, came to consist of three co-equal partners which have distinct identities and are fully autonomous in their internal affairs.

4. Since then, two important changes have taken place. In 1975 Suriname decided - with the full assent of the partners - to leave the Kingdom and become a sovereign State in its own right. In 1986 Aruba became a separate country within the Kingdom, under the Charter, and therefore now has the same constitutional status as the other two countries, the Netherlands and the Netherlands Antilles.

5. The Charter, the highest constitutional instrument of the Kingdom, is a legal document *sui generis*, which is based upon its voluntary acceptance by the three countries. It falls into three essential parts. The first part defines the association between the three countries, which is federal in nature. The fact that together the three countries form one sovereign entity implies that a number of matters need to be administered by the countries together, through the institutions of the Kingdom. Wherever possible, the organs of the countries participate in the conduct of these affairs. These matters are called Kingdom affairs. They are enumerated in the Charter, and include the maintenance of independence, defence, foreign relations, and the safeguarding of human rights and fundamental freedoms, legal stability and proper administration. The second part deals with the relationship between the countries as autonomous entities. Their partnership implies that the countries respect each other and render one another aid and assistance, materially and otherwise, and that they shall consult and coordinate in

matters which are not Kingdom affairs but in which a reasonable degree of coordination is in the interest of the Kingdom as a whole. The third part of the Charter defines the autonomy of the countries, which is the principle underlying the Charter: the countries govern themselves according to their own wishes, subject only to certain conditions imposed by their being part of the Kingdom. Elementary principles of democratic government, observance of the Charter and Kingdom legislation, and the adequate functioning of the organs of the country are matters of concern to the whole of the realm. Conversely, although Kingdom affairs are matters for the Kingdom as a whole, the countries play active roles in the way they are conducted. In foreign relations, for example, the countries themselves, under the aegis of the Kingdom, deal with matters of which the substance is in their autonomous sphere.

I. THE NETHERLANDS (EUROPEAN PART OF THE KINGDOM)

A. Introduction

1. Revision of the Constitution in 1983

6. As was mentioned in paragraph 6 of the second periodic report submitted by the Kingdom of the Netherlands in 1988, a completely revised and modernized Constitution of the Kingdom entered into force on 17 February 1983.

7. A salient feature of the revised Constitution is the rearrangement of civil and political rights in one chapter. The fact that this is the first chapter of the Constitution reflects the view that the Constitution itself allows scope for these civil and political rights, irrespective of the question of the extent to which this may burden the powers and the task of the Government. The chapter relating to the individual's civil and political rights forms an independent section of the Constitution, equiponderate to the other sections.

8. Directly after its entry into force, the Ministry of Home Affairs requested the Dutch Section of the International Commission of Jurists (NJCM) to study the effects of the implementation of Chapter I of the Constitution ("Civil and Political Rights") on Dutch legal practice. The NJCM initiated the study in 1984 and published a documentary report covering the period 1984-1990 in April 1991. The report describes how the fundamental rights laid down in the Constitution have affected legislation, the administration of justice and public administration. The areas examined in the report include ways in which fundamental rights may be restricted, horizontal effect, the monitoring of the constitutionality of the law by the legislature itself, judicial review of national legislation in the light of the fundamental rights, and the laws implementing legislation.

9. The report is mainly suitable for use as a reference work and also contains a number of interim conclusions. On the basis of these conclusions, a number of themes have been selected for further study, which will form the final phase of the study of fundamental rights. The results will be described in a final report, which will be dealt with in the next periodic report.

10. The NJCM and the National Bureau Against Racism receive an annual subsidy from the Ministry of Home Affairs and the Ministry of Justice.

2. Amendments to the Constitution pending in parliament

11. Two proposals for amendments to the Constitution pending in parliament were mentioned in chapter II.C and II.G, paragraph 118, of the second report. The proposed amendments concern article 12 (inviolability of the home) and article 23 (the freedom to provide education and the principle of equal funding of public and private schools).

12. Article 12 of the Constitution has since been amended in accordance with the bill brought before parliament. The proposal to amend article 23 of the Constitution has been withdrawn as a result of the agreement in the Government Policy Accord between the two parties which have been in government since November 1989.

3. Relationship between international law and national law

Direct effect

13. The first matter which requires consideration is the extent to which international law has direct effect within the national legal order, i.e. the scope allowed for this by national constitutional law. As far as written international law is concerned, the Dutch constitutional system adheres to a monistic point of view. Article 93 of the Constitution states that provisions of treaties and of decisions by organizations of international law, which may be binding on all persons by virtue of their contents, shall become binding after they have been published.

Primacy

14. The second question is that of primacy, i.e. whether international law takes precedence over national law. As far as the relationship between treaties and statute law is concerned, article 94 of the Constitution states that statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of decisions by organizations of international law.

15. Articles 93 and 94 of the Dutch Constitution refer to self-executing treaty provisions - that is, treaty provisions which are formulated in such a way that they grant rights to or impose obligations on individuals without requiring implementation under national law. Such provisions are therefore suitable for direct enforcement by the courts. The question of whether a treaty provision is self-executing is ultimately a matter to be decided by the courts. Case law defines the following criteria in accordance with which this matter is to be decided:

(a) The nature, content and purpose of the provision;

(b) The formulation or wording of the provision;

(c) The intent of the parties to the treaty;

(d) The presence or absence of legislation implementing the treaty;

(e) Whether it is possible to apply the treaty provision directly under national law.

4. Civil and political rights of public servants

16. The second Kingdom report mentioned (in sect. II. F) the submission to parliament of bills amending the provisions in the Central and Local Government Personnel Act of 1929, the Military Personnel Act of 1931 and the Conscripts (Legal Status) Act regarding the exercise of fundamental rights by public servants, military personnel and conscripts. The purpose of these bills was to lay down in law the restrictions imposed on the exercise of fundamental rights by public servants. As was reported earlier, these restrictions generally mean that the public servants must refrain from making public thoughts or opinions and from exercising the right of association, assembly and demonstration where the exercise of those rights would not be compatible with the adequate performance of their duties or the adequate functioning of the public service, in so far as the latter is connected with the performance of their duties. The laws in question entered into force on 2 November 1988.

17. In addition, in 1988 new legal provisions regarding travel restrictions on public servants and military personnel entered into force. These provided for two types of travel restriction, imposed in the interests of national security. Firstly, restrictions are imposed on the right of military personnel, conscripts and public servants working for the intelligence and security services to leave the country. These individuals are prohibited, unless granted an exemption or instructed otherwise, to travel to or stay in countries where an armed conflict is in progress and to travel to or stay in countries where this is deemed by royal decree to pose a particular risk to the security and other vital interests of the State (or its allies). These provisions can be found in Section 12d of the Military Personnel Act, Section 2e of the Conscripts (Legal Status) Act and Section 21 of the Intelligence and Security Services Act. Other travel restrictions exist which do not affect the right to leave the country, but do constitute a breach of personal privacy since they impose obligations with regard to private travel plans. They oblige public servants with access to secret information related to the security of the State to give notification of their intention to travel to or stay in certain countries. The public servant in question can then be informed as to the attendant security risks and may be interviewed after his return so that, if the interview should indicate that the public servant, either knowingly or unknowingly, has been in circumstances which may entail a security risk, measures can be taken to limit the consequences. This is provided for in Section 125f of the Central and Local Government Personnel Act 1929 and the Notification of Private Travel Plans Decree based thereon.

B. Implementation of specific provisions of the Covenant

Article 1 - Right to self-determination

Paragraph 1

18. The Kingdom of the Netherlands is a constitutional monarchy and a parliamentary democracy. Its head of State is the Queen, although the country is actually administered by government and parliament. Parliament consists of two chambers: an Upper and a Lower House. Members of the Lower House are elected every four years by an electorate which in principle comprises all Netherlands nationals over 18 years of age. The members of the Upper House are elected by members of the Provincial Councils, who in turn are elected by the electorate. The Netherlands has a multi-party system. Besides parliamentary and provincial elections, direct elections for the Municipal Councils take place every four years, and direct elections for the European Parliament every five years. The Netherlands electoral system sufficiently guarantees the Netherlands people's right to self-determination. For further information on the franchise see the notes on article 25.

Paragraph 2

19. The Netherlands economic system is based on a free market economy. Since such a system can create considerable differences between rich and poor, and can work to the detriment of less well-off members of society, an extensive system of social security has been developed which guarantees that no inhabitant of the Netherlands has an income which falls below subsistence level. Enterprises are bound by Netherlands and European Union regulations designed to ensure that every individual has equal chances in the economic market and that international commitments are met.

Article 2 - Non-discrimination and Article 3 - Equal rights of men and women

20. Although articles 2, 3 and 26 were treated separately in the second periodic report, in this report, due to the interrelated subjects of these articles on discrimination, they will be jointly dealt with under article 26.

Article 4 - Restrictions on derogations from obligations under the Covenant

21. No new developments under article 4 have occurred. Reference can be made to the second periodic report.

Article 5 - Prohibition of narrow interpretation of the Covenant

22. The first paragraph of article 5 has a direct bearing on the issue of the relationship between fundamental rights. The second report from the Netherlands touched upon this matter.

23. In the reporting period under consideration, the effect of the relationship between fundamental rights on society has been a factor in the introduction of several laws. The relationship between the principle of non-discrimination and other fundamental rights has played a particularly important role. Examples of laws affected by this relationship include:

(a) The Equal Treatment Act, which deals with the relationship between the right to equal treatment and freedom of education;

(b) Amendments and additions to the provisions of the Criminal Code the purpose of which is to curtail discrimination, namely articles 90 quater, 137f, 137g and 429 quater, which deal with the relationship between freedom of expression and the ban on discrimination; and

(c) Amendments and additions to article 15 of Book 2 of the Civil Code which deals with the relationship between freedom of association and the ban on discrimination.

For further information on the role of relationship between the principle of non-discrimination and other fundamental rights in the Equal Treatment Act and the Criminal Code the reader is referred to the sections on articles 2, 3 and 26 of the Covenant.

24. As emphasized in the previous periodic report, the Netherlands Government attaches great importance to the dialogue with the Committee and would be interested to learn the views of the Committee members on the question of "conflicting fundamental rights".

25. In respect of paragraph 2 of this article, the first periodic report stated that under Netherlands law the most favourable provision takes precedence over narrower treaty or national provisions. This conclusion still fully applies.

Article 6 - Right to life

26. As stated in the previous periodic report, imposition of capital punishment is banned under article 114 of the Constitution. The Netherlands committed itself to the ban on capital punishment at international level by ratifying the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (on 5 February 1986) and the Second Optional Protocol to the International Covenant on Civil and Political Rights (on 26 March 1991).

27. A fully revised Act governing the criminal law and disciplinary procedures applicable to members of the armed forces entered into force on 1 January 1991. The comprehensive revision amended all provisions allowing for the imposition of capital punishment, in order to bring Netherlands legislation fully into line with the aforementioned constitutional and international legal standards.

28. With regard to the statutory framework for the use of firearms and police instructions on the use of force, the following developments can be mentioned: On 20 December 1988, the Act of 14 December 1988 partially amending the Police Act (Bulletin of Acts, Orders and Decrees No. 576) and the accompanying Code of Police Conduct came into force. Section 33a of the amending Act establishes the powers of the police to use force under certain circumstances and to search persons in the interests of safety. Until this Act was passed, there had been no statutory basis for these powers. They are set forth in detail in the Code of Police Conduct, which is based on Section 34 of the

amending Act. As a result of the establishment of a central code, the codes previously drawn up by the burgomasters of the municipalities with a municipal police force, the National Police Code of Conduct and the Guidelines for Municipal Officers on Secondment have now lapsed.

29. The sections of the Code of Police Conduct relevant here are:

(a) Use of force by the police (arts. 2-8);

(b) Searches in the interests of safety (arts. 9 and 10);

(c) Care of intoxicated persons (art. 11).

30. The Minister for Home Affairs issued guidelines to the burgomasters of municipalities with a police force regarding the care of intoxicated persons in a circular (EA/U2820) on 21 October 1987. These are intended to guide police officers in situations where they come into contact with persons who appear to require medical help. The guidelines refer to situations occurring both within the police station and outside (on the street, in people's homes, etc.). They are in conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the United Nations General Assembly.

31. The ban on capital punishment was a key factor in the case of a member of the United States armed forces stationed in the Netherlands, who was accused of having murdered his wife. The Netherlands was under an obligation to extradite this individual to the United States under the NATO Status of Forces Agreement, since the United States had primary jurisdiction to prosecute the suspect. However, under the applicable United States law, the suspect could be sentenced to death and the United States was not prepared to guarantee that the death penalty would not be carried out in this case. The extradition of the suspect, directly resulting in the imposition and possible carrying out of the death penalty, would have contravened article 1 of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms. On 30 March 1990 the Netherlands Supreme Court ruled that neither of the treaties took precedence over the other and that in this case the interests served by observing each of the treaties should be weighed. In the opinion of the Supreme Court, the only possible decision was one in favour of the suspect, in view of the great weight which must be attached to the right not to undergo the death penalty.

Article 7 - Prohibition of torture

32. On 21 December 1988 the Kingdom of the Netherlands acceded to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the same time the Kingdom recognized the competence of the Committee against Torture to receive communications from other States parties and to receive communications from or on behalf of individuals who claim to be victims of a violation. The Convention entered into force for the whole Kingdom on 20 January 1989.

33. In support of the ratification of the Convention, the Act implementing the Convention against Torture was passed on 29 September 1988 and also

entered into force on 20 January 1989. This Act contains a definition of the offence of torture consonant with national law. The Act puts into practice the principle, prescribed by the Convention, that all offences should be treated as if they had been committed not only in the place in which they occurred but also in the territories of the other States parties.

34. Section 1 of the Act implementing the Convention defines the offence of torture as follows:

(a) Assault committed by a public official or other person acting in an official capacity in the exercise of his office on a person who has been deprived of his liberty, for the purpose of obtaining information or a confession, punishing that person, intimidating him or another person or forcing him or another person to perform certain acts or to allow them to be performed, or out of contempt for his right to be treated as an equal human being shall, if such behaviour is of such a nature that it is capable of assisting the achievement of the objective in question, be deemed to constitute torture; the penalty upon conviction of this offence shall be a term of imprisonment not exceeding 15 years or a fifth category fine;

(b) The intentional inducement of a state of acute anxiety or any other form of serious mental disturbance shall be deemed to constitute assault;

(c) If the offence leads to death, the offender shall be liable to life imprisonment or a term of imprisonment not exceeding 20 years or a fifth category fine.

35. The Netherlands Government presented its first periodic report based on article 19 of the Convention to the Committee against Torture in 1990 (CAT/C/9/Add.1). It was dealt with in Geneva on 25 April 1990. The second report (CAT/C/25/Add.1) will be considered by the Committee in the spring of 1995.

36. On 12 October 1988 the Kingdom of the Netherlands also acceded to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force on 1 February 1989. The key element of this Convention is the competence of the specially appointed Committee to inspect all places where individuals are detained by the authorities. The Netherlands was designated (subsequent to lots being drawn) for inspection by the Committee in 1992. The visit of the Committee took place between 30 August and 8 September 1992. The Committee's report will be dealt with in the next periodic report.

37. As noted in the previous periodic report, the right to the inviolability of the person was included in the Constitution in 1983. The five-year transition period which the legislature was granted in order to adjust any provisions which violated this right expired in February 1988 and this right must now be fully taken into account.

Article 8 - Prohibition of slavery

38. Although slavery in the traditional sense of the word does not exist in the Netherlands, like many other countries the Netherlands faces the

problem of trafficking in women, often in conjunction with enforced prostitution. During the discussion of the second Netherlands periodic report in September 1988 a summary was given of the action undertaken by the Netherlands to combat trafficking in women. A number of further points are made below.

39. The bill enforcing more stringently the ban on trafficking in women and minors of the male sex in article 250 ter of the Criminal Code - in which the scope of the offence is expanded to include adults of the male sex, so that the offence is now referred to as trafficking in persons - which was being drawn up at the time of the discussion of the previous report, was submitted to the Lower House of Parliament in February 1989. The bill may be summarized as follows:

(a) Heavier penalties will be introduced for trafficking in persons; the maximum penalty for this crime will be six years' imprisonment and a fifth category fine;

(b) Should the victim be a minor, or should the crime have been committed by more than one person working in collaboration, a more severe penalty will be imposed.

(c) The bill itself will contain a definition of the crime of trafficking in persons, to facilitate a clearer and better targeted investigation and prosecution policy.

This bill had not yet entered into force at the end of the reporting period under consideration.

40. Guidelines for investigation of trafficking in women and for the prosecution of offenders have been drawn up by the meeting of the Procurators-General (the highest policy-making body of the Public Prosecutions Department). These guidelines state, inter alia, that if a prostitute is in a situation which is not equal to that in which prostitutes in the Netherlands who look after their own affairs operate, misuse of authority or influence derived from the actual state of affairs shall be assumed to have occurred. The mere discovery of a prostitute in such a situation of exploitation in itself gives rise to a reasonable suspicion that article 250 ter of the Criminal Code has been contravened.

41. The guidelines are also intended to encourage the victims of trafficking in persons to report the crime to the authorities. To this end, the Aliens Circular was amended in 1988 (Government Gazette 1988, No. 174) and now victims who are residing illegally in the Netherlands and who report such crime are not only eligible for medical and legal assistance, but may also be eligible for a residence permit. In any case they will be allowed to remain in the Netherlands during the investigation and the court hearing.

42. In 1989 and 1990 the National Criminal Intelligence Service started some 25 investigations into cases involving trafficking in women. A number of these investigations are still in progress, while some have already led

to convictions. The investigations are of an international nature and in at least one case investigating officers have visited the victims' country of origin. In 1991, 34 new investigations were initiated.

43. Information supplied by the National Criminal Intelligence Service indicates that the number of investigations into trafficking in women has increased. According to information from the Organisation against Trafficking in Women, victims have become more willing to report the crime to the authorities.

44. A study published by the Ministry of Social Affairs and Employment in 1985 suggests that trafficking in women is occurring on a much larger scale than previously believed and that it generally occurs within international criminal organizations.

45. The Netherlands Government has also laid down a number of guidelines for the investigation of trafficking in women and the prosecution of offenders (Government Gazette 1989, No. 100). These guidelines aim to promote:

(a) The monitoring of sex clubs and brothels at local level and regular surveillance of an area by the same group of police officers (the visible and recognizable presence of police officers may increase victims' willingness to report offences);

(b) Attention to the care and counselling of victims;

(c) The provision of relevant information by the local and regional Criminal Intelligence Services to the National Criminal Intelligence Service, partly in order to promote regional and international cooperation, if necessary.

46. In addition to these measures, other measures have been taken in the field of aliens policy. Aliens policy was adjusted in August 1988 with the amendment to the Aliens Circular. Undertakings given by the State Secretary for Justice in talks on this matter with the Standing Committee on Equal Rights Policy on 15 March 1989 (parliamentary Papers 1988-1989 20 800, Ch. XV, No. 76) have led to a more precise policy. Enforcing authorities have been asked to pay particular attention to potential victims of trafficking as part of the general supervision of aliens.

47. The Equal Rights Policy Coordination Department of the Ministry of Social Affairs and Employment subsidizes the Hague-based Organisation against Trafficking in Women. This organization provides women who have been victims of this crime with help, shelter and counselling. It does not have its own refuge, but works with a network of secret "safe houses".

48. In 1990 the Minister for Foreign Affairs requested the Advisory Committee on Human Rights and Foreign Policy to prepare a report on the problem of trafficking in persons. The Committee was requested to advise on the most effective way of monitoring observance of the slavery conventions, on coordination within the United Nations of the activities of the various

agencies involved in the issue of trafficking in persons and on a possible role for the Council of Europe. The next periodic report will include references to the Advisory Committee's report.

Article 9 - Right to liberty and security of person

Paragraph 1

50. The following may be reported in connection with the addition to the guidelines introduced by the Human Rights Committee at its thirty-ninth session in 1990, which reads as follows: "When a State party to the Covenant is also a party to the Optional Protocol, and if in the period under review in the Report the Committee has issued Views finding that the State party has violated provisions of the Covenant, the Report should include a Section explaining what action has been taken relating to the communication concerned. In particular, the State party should indicate what remedy it has afforded the author of the communication whose rights the Committee found to have been violated".

51. On 23 July 1990, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 305/1988, submitted by H. van Alphen. The original basis for this communication was Mr van Alphen's grievance concerning the long period of time that had elapsed before compensation was granted in connection with the imposition of pre-trial detention. This grievance later focused specifically on the question of whether the pre-trial detention was "arbitrary" within the meaning of article 9, paragraph 1, of the Covenant.

52. The Human Rights Committee is of the opinion that the facts of the communication disclose a violation of article 9, paragraph 1, of the Covenant. It has indicated that it would wish to receive information on any relevant measures taken by the State party in respect of the Committee's views.

53. In May 1991 the Netherlands Government submitted a lengthy reply to the Human Rights Committee to the effect that it could not endorse the Human Rights Committee's view that a violation of article 9, paragraph 1, of the Covenant had taken place, that the statutory regulations in force offer sufficient legal safeguards for continued compliance with the provisions of article 9 in the future and that the Netherlands Government is willing, out of respect for the Human Rights Committee and taking all the circumstances into account, to grant the author of the communication an *ex gratia* payment of f. 5,000.

54. With reference to the discussion of the second periodic report of the Netherlands on the reception of asylum-seekers at Schiphol airport, mention may be made of the Supreme Court's ruling of 9 December 1988, to the effect that the residence of asylum-seekers in the "reception centre" at Schiphol-East terminal constituted deprivation of liberty within the meaning of article 5, paragraph 1, of the European Convention on Human Rights and Fundamental Freedoms (corresponding to art. 9, para. 1, of the Covenant), which lacked any statutory basis. By an Act of 19 January 1989 the Aliens Act was amended to include section 7a which provides the necessary statutory basis for this detention. This amendment entered into force on 21 January 1989.

55. The Psychiatric Hospitals (Special Admissions) Bill, including an amending Act, has since been passed by the Lower House. The outcome of the renewed and final treatment of this Bill in the Upper House will be dealt with in the next periodic report.

56. The new statutory regulations concern, inter alia, involuntary admission to psychiatric hospitals. In addition to regulating involuntary admissions, they lay down the period of validity of the authorization and the rights of the patient admitted involuntarily. These rights include the right of complaint in connection with the implementation of planned treatment and/or measures that are coercive or involve the deprivation of liberty. The patient may subsequently have recourse to the courts.

57. A number of the clauses of this Bill are no more than a codification of de facto practice. For instance, it has repeatedly been emphasized in the case law that the person concerned must be given an actual opportunity to be heard in connection with any decision concerning forced admission to a psychiatric hospital, and that if the person concerned is not represented by legal counsel, the court must ask him if he wishes to receive legal aid.

58. In addition, general psychiatric hospitals have already seen the introduction of confidential advisers for patients. Psychiatric hospitals are obliged to ensure that patients may be assisted by a confidential adviser, whose responsibilities include mediating in complaint procedures (inter alia in the area of involuntary admissions, treatment - both medical and in a more general sense - and the deprivation of liberty), advising and informing the patient on his rights, and ensuring that he knows when his case is coming before the court.

Paragraph 3

59. According to the present regulations governing remand in police custody as contained in the Code of Criminal Procedure, a suspect must be brought before an examining magistrate at the latest on the fourth day of remand in police custody (i.e. within 4 x 24 hours after it has commenced).

60. The judgement of the European Court of Human Rights in the case of Brogan v. the United Kingdom (judgement of 29 November 1988, series A, vol. 145-b), ruling that a period of four days and six hours between arrest and either being brought before an examining magistrate or being released was not in accordance with the requirement of promptness within the meaning of article 5, paragraph 3, of the European Convention on Human Rights and Fundamental Freedoms (corresponding to art. 9, para. 3, of the Covenant), led to a diversity of case law concerning the period of remand in police custody applicable here. As it was deemed undesirable that the Public Prosecutions Department should pursue a different policy at national level, the meeting of Procurators-General laid down a new policy line in March 1989 stipulating that a suspect must be brought before the examining magistrate no later than the third day of remand in police custody (i.e. within 3 x 24 hours after it has commenced). A bill to this effect is presently before Parliament.

Paragraph 5

61. It has now been established beyond all doubt by Supreme Court case law (Supreme Court judgement of 7 April 1989, Netherlands Law Reports 1989, No. 532 and Supreme Court judgement of 6 October 1989, Netherlands Law Reports 1989, No. 215) that neither the existence, nor the use of:

(a) The provisions of articles 89-93 inclusive of the Code of Criminal Procedure concerning compensation as a result of wrongly imposed pre-trial detention; or

(b) The provisions of section 42, subsection 2, of the Aliens Act concerning compensation in the case of the detention of an alien claiming that the State has unlawfully held him in pre-trial detention or remanded him in police custody in connection with the admission of aliens

can deprive a person of the right subsequently to seek complete compensation before the civil courts on the basis of article 1401 of the Civil Code.

62. The Supreme Court based this judgement on the principle that in accordance with the provisions of article 5, paragraph 5, of the European Convention on Human Rights and Fundamental Freedoms and article 9, paragraph 5, of the International Covenant on Civil and Political Rights, anyone believing himself to be the victim of unlawful deprivation of liberty must be able to claim complete compensation for the damage he has suffered as a result.

Article 10 - Treatment of persons deprived of their liberty

63. Further to the previous Netherlands report on the treatment of prisoners and efforts to encourage their participation in society, the treatment of patients in psychiatric institutions is discussed below.

64. There are 44 general psychiatric hospitals in the Netherlands. Some 15 per cent of the patients (the total number as at 21 December 1989 was 21,580) are committed under the Mental Health Act of 1884.

(a) Two types of procedure are provided for under the Mental Health Act. The first is detention, under an order issued by the burgomaster of the patient's place of residence. Within three days of the detention order being made, the president of the district court decides whether the patient is to remain in detention. Under a detention order, the patient may be held for 21 days. The second procedure is judicial authorization, which is issued by a court and is valid for six months, renewable for a year each time it expires;

(b) The 1884 Mental Health Act is to be replaced by the Psychiatric Hospitals (Special Admissions) Act, under a bill currently before the Upper House of parliament. The new Act provides for better safeguards for the rights of the individual in connection with judicial authorization, and the status of the patient is given more consideration. For instance, he or she must be heard by a court before entering the institution, and the court may order that counsel be appointed to advise the patient. Treatment may only be administered after a treatment plan has been drawn up. In principle, this plan must be approved by the patient and his or her family;

(c) The freedom of patients who have been committed to a general psychiatric hospital may be restricted. In principle, enforced treatment is not permitted, unless it is necessary in order to avert danger. As soon as this has been achieved, the treatment must cease;

(d) Each general psychiatric hospital has a confidential counsellor who helps patients exercise their rights.

65. The Enforcement of Criminal Judgements (Transfer) Act entered into force on 10 September 1986. This Act provides for the implementation of various conventions which enable foreign nationals in detention in the Netherlands to complete their sentence in their own country and Netherlands nationals detained abroad to complete their sentence in the Netherlands. Although neither the Act nor the conventions provide for an automatic right of transfer, foreign detainees who are eligible are informed of the possibility by the governor of the institution where they are being held.

66. On 1 January 1987, the Act amending the regulations on provisional convictions and provisional release entered into effect (Bulletin of Acts, Orders and Decrees 1986, No. 593). Under this Act, detainees given a custodial sentence of at least one year are entitled to be released after two thirds of the sentence has elapsed, without having to fulfil any particular conditions. Exceptions to this rule may be made only if special circumstances exist (e.g. in relation to the detainee's mental state or to serious offences committed by a detainee while serving a sentence). The rule governing sentences of six months to one year is the same, except that the date of provisional release is calculated differently.

67. Under article 122 of the 1983 Constitution a pardon may be granted by Royal Decree, with due regard to regulations laid down by or pursuant to Act of parliament. To put this principle into practice, the Pardons Act entered into force on 1 January 1988. This Act provides for a pardon to be granted:

(a) On the basis of any circumstance of which the court, at the time of judgement, failed or was unable to take account or sufficient account and which, had the court been aware or more fully aware of it at that time, would have led it to impose a different penalty or make different order, or to refrain from imposing a penalty or making an order; or

(b) If there are grounds for believing that the carrying out of the judgement or the continuation thereof cannot reasonably be expected to serve any purpose consistent with the enforcement of criminal law.

If at all possible, the appellant is heard by or on behalf of the Public Prosecutions Department.

68. On 1 April 1988, an amendment to the Prisons Act came into effect. The most important change concerns the introduction of single judge courts to

speed up the handling of prisoners' complaints. Under section 55 of the Prisons Act, judgement must be given on notices of appeal within three weeks.

69. Since 1985 extra attention has been devoted to expanding the capacity of custodial institutions. The emphasis was originally on increasing prison capacity; attention then shifted to the capacity for detaining people under hospital orders and the capacity of juvenile detention centres.

70. The expansion in capacity will enable women serving long sentences to be placed in the most suitable type of institution (a variety of types thereby becoming available), shorten the waiting time between the beginning of detention under a hospital order and entry into a specially designated institution and, finally, reduce the number of juvenile offenders held in police cells.

71. In addition, the number of forms of detention has been further increased. Since 1989, experiments have been under way with so-called "day detention", whereby a detainee approaching the end of a long sentence only remains in prison during the day, Monday to Friday, and follows an intensive programme to prepare him for his return to society. This is an attempt to reduce the socially isolating effect of a long custodial sentence. The initial results of the experiment have been very encouraging.

72. In 1990 maximum security prisons were introduced to house prisoners who are considered likely to attempt an escape, possibly with the use of force.

73. As regards the status of detained aliens, the following developments should be noted:

(a) Further to the discussion in the previous report on detainees' right to vote, it can be stated that, if an alien is entitled to vote, he will be given the opportunity of doing so during detention in so far as this is possible to arrange. The State Secretary for Justice sent a circular to governors of custodial institutions in 1989 in order to guarantee that EU nationals who are entitled to vote can do so;

(b) Under a Supreme Court decision of 16 January 1987 foreign detainees may, in principle, be eligible for transfer to an open prison. The Supreme Court regarded the fact that open prisons are intended to prepare prisoners for their return into the Netherlands society and that foreign detainees are generally expelled from the Netherlands after serving their sentence as insufficient grounds to exclude this group from open prisons. In the opinion of the Supreme Court, the detainee's character and circumstances must decide the matter, although planned deportation must be regarded as part of those circumstances;

(c) Since 1 January 1991 funding has been available for the spiritual care of Muslims and Hindus. The services of an imam or pandit can be requested by any prisoner, any individual detained under a hospital order or any juvenile detainee.

74. On 19 November 1986 an Act of parliament providing for a revision of the hospital order system came into effect. The Act improves the status of those

detained under hospital orders. For instance, two behavioural scientists must be consulted before the order can be issued, stricter criteria have been imposed for the issuing of such an order, more guarantees have been introduced into the procedure for one-year or two-year extensions of hospital orders (such as the right to legal assistance and an obligation on the authorities to hear the individual in question) and decisions on the extension of hospital orders (including decisions not to extend them) are now appealable.

75. The status of juvenile detainees was altered by the entry into force of the Youth Services Act on 1 July 1989 and the Judicial Child Care Institutions (Regulations) Decree on 1 January 1990.

76. Institutions housing children under care orders are divided into care centres, detention centres, hostels, special treatment centres and intensive treatment centres. Each institution must have a set of regulations governing detainees' legal status. Juvenile detainees have the right to complain to a supervisory or complaints committee. They are also entitled to leave of absence, unless they have been placed in the institution under an order for remand in police custody or pre-trial detention, or are serving a custodial sentence. However, these individuals may also be granted leave under certain circumstances. A bill presented to the Lower House of parliament on 21 September 1989 proposed that alternative punishments to detention and fines be introduced for young offenders. These would include community service, work to repair the damage caused by the offence or participation in an educational project.

Article 11 - Prohibition of detention for inability to fulfil a contractual obligation

77. Reference should be made to the previous Kingdom report on this provision.

Article 12 - Right to leave one's country

Legislation

78. Article 2, paragraph 4, of the Constitution, which states that everyone shall have the right to leave the country, except in cases laid down by Act of parliament, entered into force on 17 February 1988. Since the debate on the proposed Passports Act was delayed, a Passports (Interim Provisions) Act (Bulletin of Acts, Orders and Decrees 1988, 35) was drawn up to implement article 2, paragraph 4. This Act entered into force on 17 February 1988. It governs cases in which the right to leave the country may be restricted by refusal to issue a passport (grounds for refusal). The grounds for refusal in the Passports (Interim Provisions) Act are the same as those in the proposed Passports Act, which was approved by the Lower House of parliament in November 1990 and is now before the Upper House. The aim is to have the Act enter into force on 1 January 1992. It will then supersede the Passports (Interim) Act. The Passports Act is a Kingdom Act and will apply throughout the Kingdom, in contrast to the Passports (Interim Provisions) Act, which only applies to the Netherlands.

79. An individual can be refused permission to leave the country under the Passports Act on the following grounds:

(a) Refusal or cancellation may occur at the request of the Public Prosecutions Department, if there is a well-founded suspicion that an individual

  (i) Who is suspected of committing a criminal offence of such a nature that an order for detention in police custody may be issued; or

  (ii) Who has been irrevocably sentenced to custody for six months or longer, or to a fine, payable in the Netherlands, of 10,000 guilders or more, or to a corresponding sum in the Netherlands Antilles or Aruba, or

  (iii) Who has failed to observe the special conditions of a suspended sentence, a suspended hospital order or a conditional pardon,

will attempt to evade prosecution or the carrying out of the sentence by travelling to a country outside the Kingdom;

(b) Refusal or cancellation may occur at the request of the examining magistrate if the individual concerned has been declared bankrupt or is subject to the provisions of section 106 of the Bankruptcy Act (Bulletin of Acts, Orders and Decrees 1983, 140) or corresponding legislation in the Netherlands Antilles or Aruba;

(c) Refusal or cancellation may occur at the request of the minister concerned, if there is a well-founded suspicion that the individual concerned will attempt to evade military service or alternative service by travelling to another country;

(d) Refusal or cancellation may occur at the request of the minister concerned, if there is a well-founded suspicion that an individual who, due to special circumstances (e.g. in time of war), is prohibited from leaving the country under an Act of parliament or national ordinance, will nevertheless attempt to do so;

(e) Refusal or cancellation may occur at the request of the minister concerned or the relevant municipal authority, provincial authority, executive of a public body which is authorised to raise levies or demand contributions, island authority or body responsible for the implementation of social insurance legislation, if there is a well-founded suspicion that an individual

  (i) Who has failed to fulfil his obligation to pay taxes or social insurance contributions in one of the countries of the Kingdom; or

  (ii) Who has failed to fulfil his obligation to pay back a loan, subsidy or interest-free advance provided by the State; or

(iii) Who has failed to fulfil his obligation under law or under a judgement given by a court in the Kingdom to pay any benefits recoverable from him, any costs incurred by the State for which he is liable or any pre-financed sums or sums otherwise paid; or

(iv) Who has failed to fulfil a statutory maintenance obligation or a maintenance obligation imposed under a judgement given by a court in the Kingdom,

will attempt to evade legal measures to collect the sum payable by travelling to another country;

(f) Refusal or cancellation may occur at the request of the minister concerned, if there is a well-founded suspicion that the individual concerned will act outside the Kingdom in such a way as to pose a threat to the security and other vital interests of the Kingdom or of one or more of the countries of the Kingdom or the security of friendly powers;

(g) Refusal or cancellation may occur at the request of the minister concerned, if:

(i) There is a well-founded suspicion that the individual concerned will commit acts which are indictable offences under Netherlands, Netherlands Antillean or Aruban law and which the Kingdom is obliged by virtue of a legally binding treaty to define as criminal offences, and he has been irrevocably sentenced for committing such an offence or being an accessory to such an offence in the last 10 years, either within or outside the Kingdom;

(ii) There is a well-founded suspicion that the individual concerned will commit offences concerning travel documents and he has been irrevocably sentenced for committing such an offence or being an accessory to such an offence in the last five years, either within or outside the Kingdom.

80. When the Passports Act enters into force, the right of Netherlands nationals, refugees and stateless persons to a passport will be established by law. The Act also governs cases in which other aliens are entitled to a passport. Finally, it defines which authorities are authorised to issue, refuse or withdraw passports, as well as the relevant procedures and time limits.

81. In 1988 an amendment to the Central and Local Government Personnel Act entered into force, which concerned obligations for public servants travelling to other countries for purposes other than work, with a view to preserving national security. Since these obligations concern private travel, they constitute a violation of the right to a private life. The Act provides a legal basis for this violation, obliging certain public servants to give notification of planned trips to certain countries and to report on their return.

Case law

82. Article 12 of the Covenant has been invoked several times in case law over the past few years. A number of examples are given below.

83. Under the Caravans Act, an individual is only allowed to live in a caravan if he or she pursues a particular occupation or trade and, for the pursuit thereof, can be assumed to need to live in a caravan, or the applicant or his/her spouse, or a person who has had authority over the applicant, has previously held a permit to live in a caravan.

84. The appellant did not meet the requirements, but was nevertheless living in a caravan. The Provincial Executive of Zeeland ordered the appellant to vacate the caravan, under threat of a coercive measure. The appellant appealed against this order, and the Judicial Division of the Council of State was eventually asked to consider whether the actions of the Provincial Executive constituted a violation of the appellant's freedom, laid down in article 12, paragraph 1 of the Covenant, to choose his place of residence.

85. Referring to the objective of the Act - to regulate this form of dwelling in an orderly fashion, by means of a permit system, with a view to promoting the social welfare of caravan-dwellers - the Judicial Division of the Council of State pronounced that the order issued to the appellant to vacate his caravan could be regarded as necessary and consistent with the protection of public order. In the opinion of the Judicial Division, there was no evidence to suggest that an order for the appellant to vacate his caravan restricted his rights under article 12 of the Covenant (Judicial Division of the Council of State, 2 January 1986, Administrative and Judicial Decisions concerning Public Administration in the Netherlands 1986, No. 443).

86. The European Commission of Human Rights has since (on 25 February 1991) declared the applicant's application inadmissible, noting: "The Commission is of the opinion that there has been no interference with the applicant's right to move and to take up residence (Art. 2 of Protocol No. 4 of the Convention). The applicant is only restricted from living in a mobile home, but he is free to buy or rent a house wherever he wants in the Netherlands".

87. A decision given by the President of the Judicial Division of the Council of State on 9 November 1987 (Ten Berge/Stroink 1987, 177) also concerned a caravan. However, in this case, the issue at stake was the extent to which the obligation placed upon the individuals involved to move their caravans to another site contravened the provisions of, inter alia, article 12 of the Covenant. The President of the Judicial Division found that the order to move the caravans had been issued because of the adoption of a new policy on caravan-dwellers, which aimed to create smaller caravan sites and close down the old large sites. The individuals concerned were still residing on an old site which had officially been closed.

88. The objective of the new policy is to promote the social welfare of caravan-dwellers. The President concluded that, in so far as there was a restriction of the right defined in article 12 of the Covenant, this restriction was justified by the underlying objective of the new policy.

89. A Supreme Court judgement of 12 January 1988 (Netherlands Law Reports 1989, 107) concerned an individual who had been convicted of repeatedly damaging the outer wall of the house where his ex-girlfriend lived. One of the conditions of the suspended sentence passed on the offender was that he should refrain from going to two streets in the town, including the street where his ex-girlfriend lived, for the duration of the operational period (two years). The defendant lodged an appeal and, subsequently, an appeal in cassation, invoking article 12 of the Covenant. The Supreme Court gave the following ruling:

> "Taking into account the fact that the condition only refers to the two streets specified, it imposes no other restriction on the appellant's freedom to choose his place of residence than that which the court obviously regarded as necessary - and could reasonably regard as necessary - to prevent further offences and protect the rights of others."

90. A Central Appeals Tribunal decision of 26 April 1990 (Administrative and Judicial Decisions concerning Public Administration in the Netherlands 1990, 448) concerned a request from a constable first class of Drachten Municipal Police Force for exemption from his obligation to live in the place where he worked. The individual concerned wanted to live in a small village within a 10 kilometre radius of Drachten. This request was rejected by the burgomaster of Drachten, on the basis of the need for the individual concerned to be close at hand in the case of an emergency.

91. The Central Appeals Tribunal operates on the principle that an obligation to live near one's place of work does not contravene article 12 of the Covenant, provided that the area within which the employee is required to live has a functional bearing on the work. The right provided for under article 12 of the Covenant may thus be restricted if the performance of one's duties would otherwise be hampered, for instance, because of travelling time and the necessity to be available for work at short notice.

92. In this case the Central Appeals Tribunal found that there had been a violation of article 12 of the Covenant since it could not be established that the performance of the police officer's duties would be hampered to an unacceptable degree by the granting of an exemption.

Article 13 - Prohibition of expulsion without legal guarantees

93. The previous Kingdom report already referred to the need to amend important elements of the Aliens Act. This led to the drafting of a bill for a comprehensive review of the Aliens Act which was put before the Lower House of parliament on 2 February 1989. Its main points were:

(a) Substantive policy on admissions and the legal position of aliens will be regulated by law;

(b) Decision-making with regard to the admission of aliens will take place centrally at the Ministry of Justice;

(c) Legal safeguards will be adjusted by means of the introduction of the administration of justice in two instances.

94. The treatment of this bill, however, was delayed as attention focused on a number of other points when the new government took office. These elements were initially to be further specified in an amendment to the bill that had already been submitted. It proved necessary, however, to anticipate the review of the Aliens Act by changing existing legislation and administrative practice as follows:

Asylum

95. The increasing number of asylum-seekers (their number doubled in 1989 compared to 1988, and in 1990 a further 52.6 per cent increase compared to 1989 was expected) called for additional measures to be taken, such as expediting the preparation of asylum-seeker reception centres and concentrating the administration of interlocutory injunctions at The Hague District Court. Furthermore, several small changes had to be made in existing legislation, such as the creation of a statutory basis for Schiphol-East reception centre (sect. 7a of the Aliens Act).

96. At the same time, research was needed in order to find the best way to cope with the increasing number of asylum-seekers. This resulted in the establishment, on 25 June 1990, of a Committee, known (after its Chairman) as the Mulder Committee, to look into the asylum procedure and the reception of asylum-seekers. Partly on the basis of the Committee's report, a new model for the admission and reception of asylum-seekers was introduced on 1 January 1992. This new model should ensure a fast and effective response to requests for admission, and the prompt expulsion from the country of persons whose request has been denied, and for whom no further obstacle to expulsion exists.

97. In December 1991 sections 17a and 18a of the Aliens Act were introduced. These sections make it possible - under certain conditions - to restrict an asylum-seeker's liberty in various degrees, to ensure that the asylum-seeker is available during the procedure and with a view to his possible expulsion. The same amendment also expands the range of applicability of Section 7a, to include, inter alia, seaports.

Illegal immigration

98. On 14 March 1990, a Committee, named (after its Chairman) the Zeevalking Committee, was appointed, its mandate being to advise the Government on curbing illegal immigration, on the wrongful use of collective facilities and on developing an active supervision of aliens.

99. In its final report (March 1991) the Committee advocated a broad approach to curbing illegal immigration. On the basis of this report, a start was made on restricting the availability of collective facilities for aliens residing illegally in the Netherlands. To this end, efforts are being made to set up an effective and efficient channel of information from the Aliens Police to

bodies responsible for providing these facilities, whilst ensuring compliance with rules in the sphere of privacy. The problem of illegal employment has also been tackled.

100. A further step taken in 1991, jointly with the International Organization for Migration (IOM), was the establishment of a migration office providing facilities for aliens willing to leave the country. This is an important instrument supplementing a humane and effective expulsions policy. The migration programme is aimed at aliens who had initially hoped to settle in the Netherlands but were not granted a residence permit, and who now wish to leave the country whilst lacking the financial resources to do so. Under certain conditions, aliens may be eligible for migration grants.

Partial amendment of the Aliens Act

101. In addition to the above-mentioned bill for a general review of the Aliens Act, another bill was drafted in 1991 for the partial amendment of the Aliens Act and the Criminal Code. This bill includes provisions relating to:

(a) The concentration of jurisdiction in cases relating to aliens with the Aliens Division of the District Courts;

(b) Criminal liability for those providing transport to the Netherlands for an alien who is not in the possession of identity papers;

(c) Reasons for the peremptory denial of asylum requests, such reasons to be distinguished from grounds for inadmissibility or for determining that a request is manifestly unfounded.

This bill was presented to the Council of State in the summer of 1991 for recommendations. These recommendations were received at the beginning of 1992.

Article 14 - Entitlement to a fair and public hearing

102. On 1 January 1991 a number of statutory regulations entered into force which brought to an end the 20-year operation to review the criminal law, criminal procedure and disciplinary procedures applicable to members of the armed forces.

103. Many amendments were made to substantive law. The death penalty was removed from the general section of the Military Criminal Code, bringing it into line with the revised Constitution of February 1983. This also led to amendments to the Criminal Law (Wartime) Act and the Criminal Law (Wartime Occupation) Decree. The revised regulations concerning failure to carry out orders are also significant. They contain explicit grounds for justification and exemption from criminal liability. Under the regulations, total refusal to carry out any form of military or alternative service is now illegal.

104. The so-called "open standards" system, governing disciplinary offences, has been removed from the legislation. All such offences are defined. Both

substantive and procedural provisions have been laid down to restrict the use of disciplinary procedures for offences which are not strictly speaking of a disciplinary nature and are actually minor criminal offences.

105. The range of punishments available has been revised; open and closed arrest have been abolished.

106. The changes to procedural law for criminal cases are probably the most far-reaching. Separate military criminal courts, and therefore the court martial system and Supreme Military Court, have been abolished. Military personnel will now be tried by civilian courts. In principle, the general rules of civilian criminal procedure apply. However, a number of specific rules have been introduced. For instance, in appropriate cases the armed forces will send a representative to sit on full bench divisions, both at district courts and at courts of appeal. This will ensure that military expertise is brought to bear on the case. The normal rules governing appeal apply. The Military Full Bench Division of the district court will also act as a court of appeal for disciplinary cases.

107. The Military Prosecutions Department has also been abolished. Its duties have been taken over by the public prosecutors at the district courts and courts of appeal.

108. The Military Criminal Law Act also contains provisions concerning military criminal procedure in the Netherlands Antilles and Aruba.

109. Provisions have been made for the establishment of mobile courts, which can operate in areas where war is being waged or a state of emergency has been declared.

Paragraph 3 (c)

110. **Legislation**. A problem already discussed in relation to the second Kingdom report was the growing workload of the judiciary, which sometimes meant that proceedings could not be completed within a reasonable time. A number of measures aimed at counteracting this have been mentioned.

111. In the period covered by the present report, a number of new measures have been introduced to continue to ensure that proceedings are completed not only with care but also within a reasonable time. These include broadening the range of cases dealt with by single-judge divisions. However, the possibility of referring the case to a full bench division is left open, should the complexity of the case require this. This *unus* administration of justice occurs in proceedings both at first instance and in appeal.

112. By an Act of 10 October 1988 the procedure whereby objections to a notification of further prosecution or to a notice of summons are submitted was changed. On the grounds of this change, the submission of a notice of objection no longer automatically invalidates the notice of summons *ipso jure*. Furthermore, objections have to be furnished with reasons. Substantial delays (obtaining which is often the purpose of submitting the objection) can thus be prevented, and the limited time available for court sessions is used more efficiently.

113. Another point worth mentioning is the amendment to the Judiciary (Organization) Act by an Act of 16 June 1988 (sect. 101a), which allows the Supreme Court to pronounce judgement in an abbreviated form if the charge concerned cannot lead to an appeal in cassation and does not necessitate the resolution of points of law in the interests of preserving the uniformity of the law or its further evolution. In such cases the Supreme Court is not obliged to furnish its ruling with reasons. This enables the Supreme Court to cope better with its growing workload.

114. Finally, reference can be made to the Traffic Regulations (Administrative Enforcement) Act of 3 July 1989 (the so-called Mulder Act). This Act is being introduced in phases: as from 1 September 1990 it entered into force in the district of Utrecht. It will take effect at a later stage throughout the Netherlands. In general, this Act applies to relatively minor violations of traffic laws such as parking offences. It is not applicable in cases concerning personal injury or damage of goods. The purpose of this legislation is to alleviate the workload of both the Public Prosecutions Department and the judiciary, whilst at the same time confronting offenders against certain traffic regulations more quickly with the consequences of their actions. On the grounds of this Act, standard fines are directly imposed by the police for the traffic offences concerned. The offenders are required to pay either on the spot or within eight weeks. If the offender objects to the imposition of a fine, he may appeal to the Public Prosecutor, and subsequently, if he so wishes, to the sub-district court. However, he must first pay the fine, before having recourse to the possibilities of appeal. In the event that the appeal is successful, his money will be reimbursed.

115. **Case law**. It is common for article 6, paragraph 1, of the European Convention on Human Rights and Fundamental Freedoms (ECHR) to be invoked in combination with article 14, paragraph 3 (c), of the Covenant. As already noted in connection with the second Kingdom report, the question of whether a "reasonable time" has been exceeded is dependent upon a variety of factors such as the complexity of the case, the suspect's behaviour during proceedings and the way in which the case has been dealt with by the competent authorities. If the conclusion is reached that a reasonable time has been exceeded, this may lead, in a criminal case, either to the case of the Public Prosecutions Department being ruled inadmissible or to a lessening of the punishment or measure imposed.

Paragraph 3 (e)

116. The need to protect witnesses from intimidation resulting from their testimony is a fact that is acknowledged in the Netherlands. Witnesses who feel threatened are allowed to remain anonymous. This may result in hearing witnesses only in the preliminary examination, prior to the public court hearing, if necessary without the suspect, suspect's counsel or the public prosecutor being present.

117. This legal practice, though sanctioned by the case law, has attracted criticism from the point of view of the requirements to be met by fair legal proceedings, particularly in respect of a suspect's right to

confront witnesses against him and to examine them or have them examined, as laid down in article 6 of the ECHR and the relevant article of the Covenant.

118. This criticism has led to an application being submitted against the Netherlands by bodies charged with the international monitoring of compliance with the ECHR. The European Court of Human Rights ruled on 20 November 1989 that using anonymous statements as conclusive proof in order to gain a conviction limits the rights of the defence in a manner that is incompatible with the safeguards enshrined in article 6 of the ECHR.

119. Partly in order to comply with the requirements set by the European Court in respect of this case, and those since set by the Supreme Court in relation to anonymous testimony, a bill on the protection of witnesses was introduced to the Lower House of parliament on 9 January 1992, offering procedural safeguards against the abuse of anonymity.

Paragraph 3 (g)

120. On the grounds of the 1980 Personnel Regulations of the Nederlandse Spoorwegen (Netherlands railways), a public servant who has become aware of irregularities in connection with the service is obliged to make a true statement on the matter. In a ruling by the Breda District Court, the question was raised whether this obligation is compatible with the right enshrined, inter alia, in article 14, paragraph 3 (g) of the Covenant, to wit, that a person has the right not to be compelled to testify against himself or to confess guilt. Inasmuch as the person concerned was obliged to report not only on irregularities but also on offences committed by himself, the court regarded the provision to be incompatible with the said article of the Covenant, and therefore not binding (Netherlands Law Reports 1990, No. 489).

Paragraph 4

121. A bill to review juvenile law is presently before Parliament. Its main elements are:

(a) Adjustment of the law to take into account the increased ability of juveniles to speak and act independently;

(b) Review of the system of custodial punishments and non-punitive measures, limited to confinement to a juvenile detention centre (in the case of a punishment) and placement in a special youth treatment centre (in the case of a non-punitive measure);

(c) Extensive regulations for the application of alternative sanctions;

(d) A flexible transition from juvenile criminal law to adult criminal law by making it possible to apply adult criminal law in the case of persons aged 16-18 and juvenile law on persons aged 18-21;

(e) Consolidation of the legal position of minors in the provisions of criminal law.

This proposed legislation will lead to a considerable simplification of juvenile criminal law and will improve the way it links up with adult criminal law.

Paragraph 7

122. A Supreme Court judgement of 26 April 1988 (Netherlands Law Reports 1989, No. 390) invoked article 14, paragraph 7. In connection with false tax return forms, the Inspector of Taxes had imposed a retrospective assessment on the person concerned, the amount to be paid retrospectively being doubled as an administrative sanction. Criminal proceedings were then instituted against the individual, inter alia in relation to the false tax return forms already mentioned; this resulted in a one-month sentence suspended for two years, and a fine of f.10,000. The invocation of article 14, paragraph 7, of the Covenant was unsuccessful. There was no question of the person having been tried or punished twice for the same offence. In explanation, the Court observed that the additional payment imposed by the Inspector of Taxes was of a purely provisional nature. If, as had happened in the case at hand, criminal proceedings were subsequently instituted and a conviction resulted, the additional payment could be reclaimed.

Article 15 - Principle of nulla poena sine praevia lege poenali

123. Reference should be made to the previous Kingdom report on this provision.

Article 16 - Right to recognition as a person before the law

124. Reference should be made to the previous Kingdom report on this provision.

Article 17 - Right to privacy

125. Article 13, paragraph 1, of the Constitution contains a provision concerning the protection of the confidentiality of correspondence, pursuant to which a violation of this confidentiality is permissible if legislation includes a provision to this effect, and a judicial order has been made on the basis of this latter provision. In connection with the exercise of the trustee's responsibilities as laid down in the Bankruptcy Act, the trustee should acquaint himself with the contents of letters and telegrams addressed to the bankrupt, which powers were given a statutory basis in an Act of 3 December 1987.

126. In connection with the Data Protection Act, reference may be made to the previous Kingdom report. It may further be observed that the Data Protection Act entered into force on 1 July 1989. The Data Protection (Police Files) Act entered into effect in part on 17 August 1990. The Police Files Decree to implement the Data Protection (Police Files) Act and the remaining provisions of the Data Protection (Police Files) Act entered into force on 17 February 1991.

127. Both the Data Protection Act and the Data Protection (Police Files) Act give rules on the storing of personal data and the protection of people's

personal lives (partly to implement art. 10 of the Constitution). A separate Act was felt to be necessary specifically for police files because the police often deal with data that constitute a special infringement of the privacy of the individual. Monitoring compliance with both Acts is the responsibility of the Data Protection Board.

128. For the legislation concerning the use of force and body searches (for security reasons) in the course of police work, which - inter alia pursuant to articles 10 and 11 of the Constitution - required a specific statutory basis as such actions are infringements of constitutional rights concerning respect for personal life and the inviolability of the body, reference may be made to paragraph 28 of this report on the amendment of the Police Act in relation to article 6.

129. Paragraph 115 of the second Kingdom report refers to the intention of the Netherlands to become a party to the Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, prepared by the Council of Europe. The Act implementing this Convention has since entered into force, on 11 July 1990.

130. The right to the protection of privacy in connection with the recording and dissemination of personal data as laid down in article 10, paragraph 2, of the Netherlands Constitution was discussed in depth in the second Kingdom report. Furthermore, mention should be made of the Basic Municipal Records Data Bank Bill, which was presented to the Lower House of parliament in May 1989. The bill proposes regulations on the following matters:

(a) The obligation of municipal authorities to keep a data bank containing personal data on inhabitants of the municipality;

(b) The obligation of the Minister for Home Affairs to ensure that a telecommunications system is available for sending and receiving messages concerning the population register between computers;

(c) Entering and removing personal data from the files;

(d) The personal data which must be entered in the system;

(e) The source of these data;

(f) The obligation of the citizens to provide the municipal authorities with the required data;

(g) The rights of the citizens, including the right of access, with regard to personal data pertaining to them, and which have been entered in the system, as well as the right to have those data corrected;

(h) The provision of data to government bodies, other bodies, and to the person registered, and restrictions in this regard;

(i) The rights of the citizens related to the provision of data, including the right to know which of his/her personal data have been communicated to a third party;

(j) Conditions on the use of the general file number;

(k) Monitoring by the Data Inspection Board to ensure the protection of privacy.

131. The Lower House gave an overwhelmingly positive response to the bill in January 1990. The aim is to have the Act enter into force in 1993 or 1994.

132. In the meantime, preparations are being made for the introduction of the Act under the Basic Municipal Records Data Bank Decree. Under this Decree, municipal authorities may set up basic data banks and, in certain cases, provide the information contained in them to government bodies. The use of the file number will remain subject to restrictions while the Decree is in force.

Article 18 - Freedom of religion and belief

133. The following comments may be made with regard to the freedom of religion and belief, which is also provided for by article 6 of the Netherlands Constitution.

134. The so-called Hirsch Ballin Committee, which had been set up to examine the criteria for support to churches and other religious or philosophically based organizations, reported in March 1988. An important element of the report was related to government policy on spiritual care in the armed forces, prisons, youth institutions, health care institutions and homes for the elderly.

135. On the basis of this report, the Government concluded that freedom of religion and belief means that people who find themselves - often involuntarily - in the aforementioned categories of institution and people serving in the armed forces have a right of access to spiritual care from a representative of the religion or belief of their choice. The authorities themselves should provide for such care, as they have done by engaging the services of spiritual counsellors from various religions and philosophical movements. On the advice of the Committee, the Government intends to set up two spiritual counselling services for Muslims and Hindus (see also art. 10). A structured system already exists for individuals in the armed services and prisons who adhere to the traditional Netherlands beliefs of Christianity and humanism.

136. A judgement given by the Amsterdam Court of Appeal on 25 June 1987 (Administrative and Judicial Decisions concerning Public Administration in the Netherlands 87, 411) has a bearing on the horizontal effects of fundamental rights, and conflicts between them. The case revolved around the question of whether a private school has the right to expel pupils who fail to attend swimming lessons because of their religious beliefs. This concerns article 18 of the Covenant. The court found that under article 18, paragraph 3, freedom to manifest religious beliefs is subject to such limitations as are prescribed by law and are necessary in order to protect the fundamental rights and freedoms of others. The school in question invoked its constitutionally

guaranteed freedom to organize teaching as it saw fit, which was upheld by the court, since no evidence could be found to suggest that the school had abused that freedom.

137. The Judicial Division of the Council of State addressed the following question: an institution with representatives of various religions and ideologies is being subsidized. Is it unlawful to exclude from this subsidy a Protestant organization for social work which is not affiliated to the institution in question. The Division answered the question in the negative, on the basis of the following consideration:

> "That the right to freedom of religion, as enshrined in article 6 of the Constitution, article 9 of the European Convention on Human Rights and article 18 of the Covenant, may not be interpreted so broadly as to imply the right to State funding for social activities based on particular religious or ideological beliefs. This right primarily concerns the freedom of each individual to practise his/her religion or to have and to propagate a philosophy of life without the interference of the State. This right does not, therefore, give rise to financial claims on the State" (Administrative Law Decisions 1987, No. 287).

138. On 2 February 1990 the Supreme Court ruled that article 6, paragraph 1, of the Constitution, article 9, paragraph 2, of the European Convention on Human Rights and article 18, paragraph 3, of the Covenant on the freedom to manifest one's religion admit certain limitations. The case in question concerned passages in an evangelical periodical published by the plaintiff referring to homosexuality and AIDS in a manner that was insulting, unnecessarily offensive and invited discrimination. The protection afforded by article 1401 of the Civil Code against utterances judged to be unlawful must be counted among these admissible limitations.

Article 19 - Freedom of expression

Legislation

139. Paragraphs 129, 130 and 131 of the second Kingdom report gave information on the Media Act, which replaced the Receiving Licences Act, the Press Act and the 1968 Broadcasting Act.

140. The Media Act (Bulletin of Acts, Orders and Decrees 1987, No. 249) entered into force in 1988. It contains regulations concerning the provision and distribution of radio and television programmes and the provision of support to the press.

141. The Media Act aims at:

(a) Safeguarding freedom of expression, freedom to receive information and the diversity of expression by broadcasters and the press, in order, inter alia, to preserve the democratic nature of the Netherlands system of government;

(b) Ensuring that Netherlands cultural traditions are protected and offering improved opportunities for distributing Netherlands cultural products, particularly by radio and television;

(c) Guaranteeing that a public radio and television service is provided, which means that programmes are transmitted on a non-commercial basis for both a wide audience and minority groups. Each broadcasting organization is therefore obliged to provide a full range of programmes consisting of information, education, culture and entertainment.

142. The four principles underlying the Media Act are openness, pluralism, non-commercialism and cooperation. The Act provides for freedom of expression in so far as this is consonant with the responsible use of the media. Cooperation in broadcasting is intended to provide a broad base which will make possible a joint responsibility for the use of the media and ensure that the media are operated efficiently. Openness is offered by the admission of new broadcasting organizations, provided that they fulfil certain criteria governing their objectives, format and membership. Admission to the broadcasting system is facilitated by the provision on prospective broadcasting organizations, which have to fulfil the same criteria in respect of their format and objectives, but do not have to have so many members.

143. Evidence of the system's openness is also found in the opportunities provided for broadcasting time to be allocated to churches, religious and philosophically based organizations and political parties. Other small bodies and organizations are reliant on the NOS (Netherlands Broadcasting Company) Programme Foundation. This Foundation is designed to prevent the fragmentation of broadcasting time and broadcasting organizations.

144. The Media Act also provides for open administration in that broadcasting cooperation is embodied in an umbrella organization, the NOS Programme Foundation, which draws support from various cultural and other sectors of society as well as from broadcasting. This broad support base is reflected in the composition of its administrative body. An unusual and important aspect of this cooperation is the fact that the NOS Programme Foundation will broadcast broadly based joint programmes on both radio and television, with contributions from a number of organizations.

145. The following recent developments in commercial broadcasting can be noted:

(a) In May 1990 the Netherlands Government submitted to the Lower House of parliament a bill proposing that the Media Act be amended. It proposes that a possibility be created for national commercial broadcasting organizations to be set up. Parliament opted for a system whereby legal persons who met certain formal requirements for commercial broadcasting organizations would be granted permission to provide programmes and have them transmitted through the cable network, to which over 80 per cent of Netherlands households are connected. The restriction of commercial broadcasting to distribution by cable is a result of the shortage of air frequencies available; it was decided to continue using the existing airwave network for the public broadcasting service, in view of the special responsibilities of the broadcasting organizations which provide this service;

(b) The bill also contains provisions concerning access for broadcasting organizations based abroad. The bill proposes a system whereby foreign programmes could be distributed freely on the Netherlands cable network, provided they do not circumvent Netherlands media legislation. This would remove all obstacles to the transmission of foreign programmes by cable.

146. Paragraph 3, article 7, of the Constitution guarantees the freedom to make public thoughts and opinions by means other than those referred to in the first two paragraphs of article 7, such as on sound recordings and videotapes. No one may be required to obtain prior approval of thoughts and opinions before making them public. Restrictions on this right may only be imposed by Act of parliament. The last sentence of paragraph 3 makes an exception for performances open to persons under 16 for the purpose of protecting good morals. This implies, inter alia, that films for persons over the age of 16 may not be subject to compulsory censorship.

147. The Media Act states that films which, under the Film Censorship Act, are not suitable for persons under the age of 12 or 16 may not be transmitted on television before 20.00 and 21.00 hours respectively.

Case law

148. On 23 October 1987 (Rechtspraak van de Week 1987, No. 191), in the dispute between the NOS (Netherlands Broadcasting Corporation) and the KNVB (Royal Netherlands Football Association) concerning the recording and subsequent broadcasting on radio and/or television of football matches organized by the KNVB solely when the KNVB had given its permission for such and received a fee, the Supreme Court ruled as follows: "The fact that the KNVB withholds information from the NOS, whether or not this information is available only after payment of a fee, is not a breach of the right to gather news enshrined, inter alia, in article 19 of the Covenant".

149. On 11 July 1991, the European Commission of Human Rights declared the application of the NOS to be inadmissible. In so deciding, the Commission noted:

> "that the football matches referred to in the present case are organized by a private organization. Admission is subject to conditions under private law. The question arises, however, whether the respondent Government was obliged under article 10 of the European Convention (corresponding to art. 19 of the Covenant) to ensure a right to free reporting of these matches by radio and television.
>
> "The financing of football matches normally consists, to a large extent, of fees paid by the general public attending the match. Another important source of financing is, in many European countries, money paid by the television and radio in order to obtain the right to direct reporting of the match.
>
> "In these circumstances, it cannot be considered an interference with the right to freedom of expression as guaranteed by article 10 of the

> Convention if the organizer of a match limits the right to direct reporting of the match to those with whom the organizer has concluded agreements on the conditions for such reporting".

150. A final point meriting attention is the application submitted by a person held in pre-trial detention in Amsterdam, who was not allowed to give an interview to newspaper journalists. The Director of the Remand Centre had justified this by citing a regulation originating from the State Secretary for Justice concerning contacts between detainees and the press, on the grounds of which it is not permissible for a person held in pre-trial detention to be interviewed by the press in relation to a criminal case against him that is still sub judice. The appeals committee decided that there was no question of any incompatibility with freedom of speech, as the person concerned was free to communicate with the outside world, including the press, in various other ways. The nature of pre-trial detention is, however, such as to preclude interviews with reporters or press conferences (NJCM Bulletin 1989, pp. 556 ff.).

Article 20 - Prohibition of war propaganda

Paragraph 1

151. With regard to paragraph 1, reference should be made to the preliminary report of the Netherlands on this provision. The Netherlands is still of the opinion that the qualification made when the Covenant was ratified should remain in force. For the arguments in support of this position, reference is made to the verbal observations that accompanied the second Kingdom report.

Paragraph 2

152. In recent years there have been a number of developments both in case law and in legislation concerning the fight against racial discrimination. Reference may be made in this regard to the tenth report on the grounds of article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination in which these developments are dealt with.

Article 21 - Right of assembly

153. The second Kingdom report examined the bill regulating the exercise of the freedom of religion and belief other than in buildings and enclosed places and of the right of assembly and demonstration which was pending in the Lower House of parliament (see sect. II.G, paras. 139-141). That bill was approved by Parliament and entered into force on 27 April 1988 (Bulletin of Acts, Orders and Decrees 1988, 157).

154. In a judgement of 9 June 1987 (Interlocutory Injunction 1987, No. 268), the presiding judge of The Hague District Court acknowledges the horizontal effect of the right of assembly. The case in question concerned an organization, to wit the Netherlands South-African Society, which had wanted to hire a room at The Hague Conference Centre to celebrate the Day of the Covenant. The Conference Centre had refused them permission, referring, *inter alia*, to the organization's objectives and to its own commercial interests. The presiding judge ruled that the refusal constituted an

unwarranted violation of the right of assembly, a right accruing to all citizens, whether or not they hold controversial views. Although the decision of the presiding judge itself infringed upon the freedom of contract, the judge held that this latter freedom must give way to the protection of the organization's constitutional rights.

Article 22 - Freedom of association

155. As mentioned in the previous report, freedom of association is guaranteed under article 8 of the Constitution. Furthermore, the Netherlands ratified ILO Convention 87 (Freedom of Association and Protection of the Right to Organise) in 1950, while ILO Convention 151 (Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service) entered into force for the Netherlands on 29 November 1988. The guarantees provided for under ILO Convention 151 are laid down in the Central and Local Government Personnel Act 1929 and the Military Personnel Act 1937 and the decrees based thereon.

156. By an Act of 17 March 1988 (Bulletin of Acts, Orders and Decrees 1988, No. 104) an amendment was introduced to articles 15 and 16 of Book II of the (old) Civil Code. On the grounds of the old regulation, the court had the power to dissolve a legal person judged to be unlawful, if the public prosecutions department had so ordered. The legal consequences ensuing from a judicial decision of this kind therefore consisted solely of dissolution; no legal consequences were attached as such to the court's finding that the legal person was unlawful. The decision was not binding on either the criminal judge or, in the case of political parties, the Electoral Council.

157. This situation was felt to be unsatisfactory. The amendment was drafted as a solution by obliging a court, when so ordered by the public prosecutions department, to explicitly declare illegal a legal person whose functioning contravenes public order, and subsequently to dissolve it.

Article 23 - Protection of family

158. The following Acts concerning protection of the family came into effect during the reporting period. Furthermore the Netherlands has ratified a number of international conventions in the field of the law of persons and family law:

> The Act of 3 July 1989 (Bulletin of Acts, Orders and Decrees 287), approving the Agreement on the law applicable to surnames and forenames, signed at Munich on 5 September 1980 [Treaty Series 1981, 72], and the Agreement on the issuing of certificates concerning the bearing of different surnames, signed at The Hague on 8 September 1982 [Treaty Series 1982, 169], entered into force on 4 July 1989;
>
> The Act of 8 December 1988 (Bulletin of Acts, Orders and Decrees 566), containing regulations on the fostering of foreign children with a view to adoption, entered into force on 15 July 1989;

The Kingdom Act of 7 September 1989 (Bulletin of Acts, Orders and Decrees 391), approving the Convention on Celebration and Recognition of the Validity of Marriages, signed at The Hague on 14 March 1978 [Treaty Series 1987, 137], entered into force on 28 September 1989;

The Act of 3 July 1989 (Bulletin of Acts, Orders and Decrees 288), containing regulations on conflict of laws relating to surnames and forenames, entered into force on 1 January 1990, partly in connection with the ratification of the Munich Agreement of 5 September 1980 on the law applicable to surnames and first names [Treaty Series 1981, 72];

The Act of 7 September 1989 (Bulletin of Acts, Orders and Decrees 392), containing regulations on the conflict of laws relating to marriage, entered into force on 1 January 1990, in connection with the ratification of the Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages;

Act of 7 June 1990 (Bulletin of Acts, Orders and Decrees 302), amending Title 4 of Book 1 of the Netherlands Civil Code. This Act provides for further regulations governing registration of birth, marriage and death certificates issued by a competent body outside the Netherlands in accordance with local regulations in the register of births, marriages and deaths in The Hague (art. 20a, Book 1 of the Civil Code). Registration is open to individuals who, at the time of the request to be registered, are Netherlands nationals or have at any time been Netherlands nationals or Netherlands subjects and to individuals who have been admitted to the Netherlands as refugees under the Convention of 28 July 1951 relating to the Status of Refugees;

The Act of 13 September 1990 (Bulletin of Acts, Orders and Decrees 1990, 482), containing further regulations governing access in connection with divorce entered into force on 1 December 1990. The Act strengthens the legal basis on which parents who are not appointed as guardian in a divorce settlement are allowed access to their child(ren). In such matters, a great deal of consideration is given to the position and the interests of the child. Minors of 12 years and older have now been given the opportunity to initiate proceedings to establish or alter access arrangements if the legal representative or the parent who has not been appointed guardian fails to take steps to do so.

Surrogate motherhood

159. The phenomenon of surrogate motherhood, whereby a woman allows a foetus to develop in her womb with the intention of giving birth to a child for someone else, and has made agreements with the person(s) concerned to this effect, is deemed undesirable by the Netherlands Government. Too many risks are attached to this phenomenon, particularly with regard to the child and its development. An agreement concluded between a surrogate mother and someone desiring to parent such a child should therefore be regarded as void, in the Government's opinion.

160. In the light of this, a bill has been put before the Lower House proposing several additional provisions to the Criminal Code to curb

commercial surrogate motherhood. On the grounds of these provisions, it will become a criminal offence to offer professional or commercial mediation in relation to surrogate motherhood or to publicize either the availability of a surrogate mother or the desire to procure one.

Article 24 - Protection of the child

Paragraph 1

161. The following developments concerning child abuse should be noted. The Netherlands has 11 centres for medical counselling in cases of child abuse, which are fully subsidized by the Ministry of Welfare, Health and Cultural Affairs. These are places where individuals can report suspected cases of physical, psychological or sexual abuse of children.

162. The centres employ medical staff, social workers and administrative staff and their task is to verify whether abuse has actually taken place. Once this fact has been established care organizations and/or the judicial authorities are contacted. The annual report issued by the national organization which controls the centres indicates that 7,429 cases of child abuse were reported in 1988, of which 45 per cent were cases of physical abuse and neglect, 26 per cent involved psychological abuse and neglect and 29 per cent involved sexual abuse. The highest percentage of abused children (18 per cent) were between three and eight years old. Government policy is aimed at prevention, early recognition and reporting of the crime, and improvement of care by encouraging people to specialize in this field and by promoting cooperation between care institutions and professionals.

163. Child-care policy in the Netherlands will be boosted by the introduction of new legislation.

164. The Child Care Incentive Scheme, based on sections 13 and 14 of the Social Welfare Act, aims at substantially increasing the number of child-care places available. To this end the Government has made funds available over a four-year period, rising from f. 150 million in 1990 to f. 275 million in 1993. Up to 1989, parents who used child-care facilities could offset the cost against income tax, but this is now no longer possible. The money which has therefore become available - f. 130 million a year - forms part of the budget for the incentive scheme. The Government has thus opted to use the money to create new facilities instead of giving it to parents who could use it to find their own solutions to child-care problems. The incentive scheme is expected to create some 55,000 new places, which will be used by at least 80,000 children. Incidentally, a study conducted in 1987 indicated that 160,000 children needed child-care facilities.

165. The incentive scheme has its legal basis in the Social Welfare Act, which also governs all other types of subsidized child care. The Act gives responsibility for the implementation of the policy to local authorities. The Government therefore distributes the incentive scheme budget amongst the municipalities, which each receive a share proportional to their size (measured in terms of the number of dwellings in the municipality). Virtually all municipalities have opted to participate in the scheme. Central Government can only impose broad conditions on the municipalities; after all,

they bear direct responsibility for the implementation of child-care policy. Each municipality is required to draw up a set of regulations containing minimum standards for child-care organizations concerning, for example, safety and hygiene, size of groups, size of accommodation, equipment and the level of staff training. Some municipalities have included in their regulations a condition stipulating that anyone wishing to provide child care must first obtain a permit from the municipality. Other municipalities have not set such a condition. The municipalities will receive a government grant for four years for an agreed number of new child-care places. This grant (approximately f. 5,000 per place per year) may be used for investments or for running the new facilities. On average, the total running cost of one place in a day nursery is between f. 12,000 and f. 14,000 per year. Because the municipalities are primarily responsible for implementing child-care policy, no national regulations exist regarding the amount of money parents are obliged to contribute. However, central Government has issued a table which can be used as a guideline and is in fact widely used as a standard. The size of the contribution depends on the parents' income. The minimum contribution in 1990 was f. 60 for a full-time place in a day nursery; the maximum was f. 780.

166. Certain changes have been made in the regulations for adoption:

(a) The previous requirement that the child not be a legitimate or natural child of either of the adoptive parents has been dropped, making step-parent adoption and the adoption of one's own child possible;

(b) Both adoptive parents should be at least 18 years old and at most 50 years older than the child, except in cases where a person is adopting his or her own legitimate or natural child;

(c) Adoption cannot take place if the child is 15 years of age or older, and objects to the adoption.

167. By Kingdom Act of 2 May 1990 (Bulletin of Acts, Orders and Decrees 201), the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children, as well as the Hague Convention on Civil Aspects of International Child Abduction were ratified. The Act ratifying the two conventions entered into force on 18 May 1990, and the Act of 2 May 1990 to implement them (Bulletin of Acts, Orders and Decrees 202) entered into effect on 1 September 1990. This means that it is now possible to tackle the phenomenon of international child abduction with maximum effectiveness.

168. For the bill to review juvenile criminal law, reference should be made to paragraph 121 of this report.

Paragraph 3

169. Reference can be made to the second periodic report of the Netherlands on this provision (paras. 156 and 157) regarding the right to acquire a nationality.

Article 25 - Right to take part in public affairs

Paragraph (b)

170. Under the Constitution, the right to vote and stand in parliamentary and provincial elections is given only to Netherlands nationals. However, article 130 of the 1983 Constitution provides for the possibility that the right to elect members of a municipal council and the right to be a member of a municipal council may be granted by Act of parliament to residents who are not Netherlands nationals provided they fulfil at least the requirements applicable to residents who are Netherlands nationals. For details on the legislation in question, reference can be made to paragraphs 165 and 170 of the second periodic report of the Kingdom.

171. Residents who are non-Netherlands nationals were granted the right to vote under the Franchise Act and to become a member of a municipal council under the Municipalities Act. As stated above, they must fulfil the requirements applicable to residents who are Netherlands nationals. In addition to fulfilling these requirements, section B 3 of the Franchise Act and section 21 of the Municipalities Act require them to have resided in the Netherlands for a consecutive period of at least five years, with a valid residence permit. Residents who are not Netherlands nationals and who are working in the Netherlands in the service of another State whose nationality they possess, their spouses or partners and their children who live in the same household, are not entitled to vote.

172. In the municipal elections of 1990 28 non-Netherlands nationals were elected to sit on municipal councils. Furthermore, 22 Netherlands nationals from minority groups were also elected:

Moluccans	6
Moroccans	2
Yugoslavs	1
Belgians	4
Italians	1
Turks	19
Surinamese	14
Antilleans	2
Egyptians	1

These figures only give an indication. Exact data are not available, since municipal councils are not obliged to provide information on their composition.

173. The second periodic report mentions 50 foreign residents who are believed to have been elected to municipal councils. This figure includes residents who are not Netherlands nationals (approx. 35) and Netherlands nationals from minority groups (approx. 15). The number of non-Netherlands nationals elected has fallen slightly, the number of Netherlands nationals from minority groups who have been elected has shown a slight increase.

Paragraph (c)

174. In the previous periodic report, the right of aliens to hold public office was dealt with under article 27 (minorities). However, in view of the wording of the articles in the Covenant, this matter will henceforth be discussed under article 25 (c).

175. On 2 November 1988 the 1858 Foreign Nationals (Public Service) Act was repealed. This Act specified a limited number of posts to which aliens could be appointed as public servants in government service. In principle, now that this Act has been repealed, aliens can be appointed as public servants in any post in the public service, unless the post in question is subject to a legal requirement that the holder be a Netherlands national. This makes the legal status of non-Netherlands nationals working for the Government virtually equal to that of Netherlands nationals.

176. Foreign nationals can now hold all posts where a significant link between nationality and the duties of the post can no longer be deemed to exist. This link does, however, exist in the case of jobs an essential part of which involves exercising direct authority over citizens and posts connected with national interests, particularly the internal and external security of the State. Specifically, these are posts in the judiciary, the police force, the military apparatus, the representation of the Netherlands abroad and posts involving access to sensitive and secret information. Netherlands nationality is only a precondition for holding these posts.

Article 26 - Prohibition of discrimination

177. As was explained earlier, articles 2 and 3 of the Covenant will be discussed together with article 26 in this section.

178. There are no new developments to report with regard to the means of implementation of article 2 of the Covenant. This subject was discussed extensively in the first and second periodic report and particular attention was given to the content and meaning of article 1 of the Netherlands Constitution.

179. In the previous report submitted by the Netherlands Government, reference was made to the preparations for legislation to tackle discrimination on grounds of sex, marital status and sexual orientation. An Equal Treatment Bill was presented to parliament in March 1988. After heavy criticism both from parliament and from non-governmental organizations, this bill was withdrawn in 1989. The main criticism was related to the exemption possibilities for religious, philosophically-based and political organizations. The ban on discrimination provided for in the bill would not apply to requirements which such organizations could reasonably be expected to make on the basis of their principles and aims. Also, the lack of an adequate enforcement mechanism was heavily criticized.

180. Immediately after taking office in 1989, the new Government withdrew the bill. A start was made on drawing up a new bill, to counter the aforementioned criticism. The new bill went to parliament in February 1991. It contains general regulations to protect individuals against discrimination

on the grounds of religion, belief, political opinion, race, sex, heterosexual or homosexual orientation and marital status. The bill aims at promoting participation in a number of areas which are of great importance to the individual. In these areas, the bill bans any discrimination on the grounds of religion, belief, political opinion, race, sex, heterosexual or homosexual orientation or marital status, except in cases where the bill states that discrimination is justified.

181. The grounds for exception are limited and very strictly formulated. The ban on discrimination laid down in the bill shall not prejudice the freedom of religious, philosophical or political institutions and private educational institutions to set requirements which, in view of the aims of the institution, are necessary for exercising the duties of a particular post or upholding the principles of the institution. The bill states that such requirements must not lead to discrimination based on the mere fact of race, sex, heterosexual or homosexual orientation or marital status, or merely on religion, belief or political opinion, depending on the principles of the institution. The fact that someone is homosexual must not, therefore, be a factor in assessing that individual's suitability for a particular job. The distinguishing criteria described in the bill may never be used as an independent reason for discrimination.

182. The authors of the new bill paid particular attention to the question of enforcement. Anyone who feels to have been discriminated against may take his or her case to court on the basis of the provisions banning discrimination. In addition, pressure groups have also been authorized to take such cases to court. Under the bill, an Equal Treatment Commission will be set up, which will be an independent body, easily accessible to anyone, and will be responsible for investigating and assessing alleged cases of discrimination. The bill thus provides for special monitoring of observance of the new legislation.

183. Any individual who believes that he or she has been discriminated against will be able to go to the Commission, which may start an inquiry and assess the facts. The Commission will also be authorized to launch investigations, on its own accord, into systematic discrimination within the public sector or in any area of society. It may, at its own discretion, make recommendations on ways in which discriminatory policies should be altered. The Commission may send copies of its assessment to the organizations involved. It will be authorized to institute legal proceedings on its own behalf to obtain judgements on acts which contravene the law. The Government hopes that the bill will enter into force on 1 January 1994.

184. Parliament has ratified the Convention on the Elimination of All Forms of Discrimination Against Women. It entered into force on 23 July 1991.

185. On 1 July 1989 the revised Equal Opportunities (Employment) Act entered into force. This Act replaces three others which dealt with work and remuneration.

186. The Act prohibits direct and indirect discrimination. Direct discrimination is directly related to whether the individual in question is a man or woman. Indirect discrimination refers to what initially appear to be

neutral measures or regulations but what in practice turn out to be measures or regulations that benefit or harm one particular sex. This type of indirect discrimination is banned, unless it is objectively justified.

187. The Act applies to "employment" in the broadest sense, including recruitment and selection, the conclusion and termination of employment contracts, terms and conditions of employment, promotion, training, exams and career guidance. Anyone who carries out work under the authority of another may invoke the Equal Opportunities (Employment) Act. The Act not only applies to work under an employment contract or civil service regulations but, now that the revision is complete, to other working relationships such as work experience placements, voluntary work and work carried out legally by people receiving benefits. Professional practitioners and military personnel are also covered by the Act.

188. Any individual who suspects that discrimination is taking place may report this to the Equal Opportunities Commission, not to be confused with the above-mentioned Equal Treatment Commission. The Equal Opportunities Commission deals with complaints not only from individual employees, but also from employees councils and trade unions. The Commission considers the complaint, gives advice and may also launch an investigation on its own initiative. It is not authorized to impose penalties, which is a matter for the courts. The new Act also provides for legal proceedings to be instituted collectively. Since the revised Act entered into force the Commission has received more than 400 complaints.

189. The following further information should be noted with regard to the Equal Opportunities Commission: in the period 1 July 1989 to 31 December 1990 the Commission received 373 requests for assessments; 187 requests were submitted by individuals, 193 by pressure groups (group action), 11 by workers councils and public servants' representative committees and 7 by employers who wished to have their own equal opportunities policy assessed. Of the 187 individuals who applied, 24 were men and 163 were women. Most of the requests submitted by groups concerned recruitment and selection procedures.

190. By far the most requests (246) concerned sex discrimination in recruitment (in the advertising of job vacancies) and selection. Fifty-two cases involved salary, 13 concerned alleged unequal treatment in terms and conditions of employment. Other matters, on which 32 requests were submitted, were as follows: employment contracts, promotion, training, dismissal and redundancy, the professions, vocational training and pensions. Fifty-five cases involved combinations of these matters. Of those 55 cases, 9 involved pregnancy (e.g. starting a new job and pregnancy) and 3 involved discrimination between married and unmarried individuals.

191. In March 1991 a bill for a new Surviving Dependants Bill was presented to the Lower House of parliament. The bill proposes that the current legislation, under which men and women have different status, be abolished. In addition, it is proposed that married and unmarried couples be treated equally for the purposes of survivors' pensions.

192. The bill for the equal treatment of men and women under the Victims of Persecution (1940-1945) Benefits Act and the Civilian War Victims (1940-1945)

Benefits Act proposes that the breadwinner requirement, which discriminates against married women, be abolished, to bring the Act into line with article 26 of the Covenant. The Lower House of parliament has approved the bill, which is expected to complete its passage through the Upper House by the end of 1991.

193. The General Disablement Benefits Act (AAW), introduced in 1976, originally provided for a pension in case of disability, without supplementary conditions regarding loss of income, for men and unmarried women only.

194. Since 1979 the Act has been harmonized with the principle and, consequently, married disabled women may now also apply for a pension. Since then the condition that all disabled persons should have received a certain income from - or in connection with - work during the year before the disability arose has been introduced. Men and unmarried women who had become disabled before 1 January 1979 retained their rights to a pension, even if they had not met the above-mentioned income condition.

195. However, in 1988 the Central Appeals Tribunal decided that certain elements in the General Disablement Benefits Act were incompatible with the spirit of the conditions of article 26 of the Covenant. The objection of the Central Appeals Tribunal was aimed at the legal conditions that, with regard to those who had been disabled before 1 January 1979 a distinction had been made between men and unmarried women who, without income conditions, could be entitled to benefits on the one hand, and married women who did not have any right to benefits at all on the other.

196. As a consequence of this assessment, further measures have been taken by the legislature, and consequently the above-mentioned distinction has been abolished. Subsequently, equality of treatment has been secured by introducing only one condition that anyone who became disabled before 1 January 1979 must have passed the income test in order to qualify for a pension. In this way the distinction between both categories of persons has been eliminated.

197. The present General Widows' and Orphans' Benefits Act (AWW) does not yet provide for pensions for widowers, but only for widows. However, the Central Appeals Tribunal has decided that survivors' pensions are to be granted to widowers on the same footing as those granted to widows. This judgement was based on article 26 of the Covenant.

198. At present a new law is in preparation under which widowers will be entitled to receive a survivors' pension on the same basis as widows. The Surviving Dependants Act, which replaces the present General Widows' and Orphans' Benefits Act, will contain a general revision of several provisions making them more appropriate to the current situation.

199. As regards equal treatment of men and women under survivors' pension regulations for public servants and political office-holders, it should be noted that a bill proposing an amendment to the Public Servants' Superannuation Act and a bill amending the Political Officeholders'

Superannuation Act were presented to the Council of State in 1991. These bills aim to place widowers' pensions on the same legal footing as widows' pensions.

200. With reference to the views expressed by the Committee in the cases of Broeks and Zwaan De Vries, the complainants can apply to the civil courts for redress if they so desire.

201. In 1991 a proposal concerning equal treatment of married couples and unmarried cohabitants in legislation governing the legal status of public servants was presented to the Council of State. A public servant or the partner of a public servant who runs a joint household with an individual of the same or opposite sex under a notarial cohabitation contract is to be given the same legal status as the spouse of a public servant.

202. In the Netherlands, increasing attention is being drawn to discrimination on the grounds of age. The Netherlands Government regards this as an important issue, partly because both authorities and individuals are guilty of this type of discrimination in many areas of life. The forms which this discrimination takes and the areas it affects are so diverse that further study is needed before a clear policy can be formulated. A study has already been carried out into the acceptability of setting age limits for employment. The Government, employers' organizations and trade unions are holding talks under the auspices of the Joint Industrial Labour Council on developing a policy on age criteria for employment. The talks are based on a consultative document produced by the Ministry of Social Affairs and Employment. A civil service working group has also begun preparations for a further general study of this matter in other areas of society, focusing primarily on age discrimination in regulations and legislation.

203. The Civil Code contains provisions that protect persons from dismissal whilst they are performing compulsory military service. At the present moment, a bill is before parliament which aims to extend the scope of this protection to include individuals performing compulsory military service in a country other than the Netherlands.

204. On 1 February 1992, the Act of 14 November 1991 entered into force. This Act makes various additions to the Criminal Code to combat discrimination on the grounds of race, religion, beliefs, gender or sexual preference (see also observations in respect of article 5). By means of amendments to articles 90 quater, 137c to 137g inclusive and 429 quater, existing criminal law anti-discrimination legislation has been tightened up, and the grounds on which discrimination is brought into the criminal sphere have been expanded beyond religion, beliefs and race - the latter understood as incorporating colour, origin and national or ethnic descent - to include gender and sexual preference (specifically heterosexuality or homosexuality). The principle underlying this broadening of scope is that inclusion of a prohibition in criminal law has a preventive effect. The changes make it easier to act when women, for example, are subjected to discrimination and/or aggression.

205. Other significant changes are: in article 90 quater of the Criminal Code, the concept of discrimination has been redefined. "Discrimination" is now said to have occurred when a given distinction is made which either aims

to violate human rights and fundamental freedoms, or which has that effect, in any area of social life. Thus, the anti-discrimination provisions in criminal law do not relate solely to dealings with government bodies or comparable private organizations, but to the entire fabric of social life outside the sphere of personal relations.

206. Discrimination in the exercise of professional or business activities has been made an indictable offence in the new article 137g of the Criminal Code, whilst remaining a summary offence according to article 429 quater of the Criminal Code. Furthermore, it is now also an offence under these provisions to practise discrimination whilst discharging one's duties in public office.

207. Article 137f of the Criminal Code has been changed so that participation in discriminatory activities, or providing material assistance for the benefit of such activities, is now an indictable rather than a summary offence.

208. It has also become an offence, under article 137e of the Criminal Code, to confront third parties with unwanted discriminatory utterances, for instance by sending them unsolicited publications through the mail.

209. As a result of the Committee's views of 9 April 1987 on the communications of Broeks and Zwaan De Vries concerning an alleged violation of article 26 because of the refusal to pay benefits under the Unemployment Benefits Act to married women/non-breadwinners and the entry into force of the various EU directives on the equal treatment of men and women, significant developments have taken place in the areas of both the administration of justice and legislation. In the case-law, almost all the main social security regulations in the Netherlands have been examined for compatibility with the principle of the equal treatment of men and women. Other distinctions, however - such as that between married and unmarried persons living together - have been the focus of attention in various proceedings. As already noted, this has led to various new bills being drafted in the area of social security.

210. For the Government, this case law did not merely entail a simple adjustment of existing regulations; it also gave rise to complicated problems with regard to interim law and determining the validity of financial claims in a non-discriminatory manner. In order to subject the relevant problems to further analysis and - if possible - to prevent them continuing to arise in the future, the Netherlands Government commissioned a comprehensive study.

211. In this study a detailed analysis has been made of the various non-discrimination provisions in national and international law. Various points were examined:

(a) The circumstances which determine the legitimacy of a distinction made in legislation and in judicial practice (whether in respect of gender, marital status of persons living together, nationality, full-time or part-time employment, previous employment or age);

(b) The proper way for the Government to arrive at weighed decisions when preparing legislation;

(c) The moment by which the Government is obliged to have eliminated certain types of distinctions;

(d) The role of the courts in adhering to the principle of equality; and

(e) The proper action for executive bodies to take when unjustified distinctions are seen to occur in executive practice.

212. This study led to the conclusion that no criterion can be either legitimate or unwarranted in all cases. (An illuminating example is the judgement of an arbitration tribunal considering the question whether it was legitimate for a company advertising a vacancy in its warehouse to require that the successful applicant speak the Netherlands language. The tribunal decided that it was not (Migrantenrecht 1988, No. 50)). This means that much will depend on the concrete circumstances of the case, such as the purpose of the regulation, the purpose of the distinguishing criterion introduced, the relationship between ends and means, etc. In any case, the Government should always explain why a given criterion is being set; in other words, it should give the objective justification for the distinction. The next periodic report will deal with the operation "Anders Geregeld", which aims to eliminate all unjustified distinctions between men and women and between married and unmarried people in legislation.

Article 27 - Minorities

Burial and Cremation Act

213. An Act of 7 March 1991 (Bulletin of Acts, Orders and Decrees 1991, 130) introduced new provisions regarding burial and cremation, which allow the various immigrant groups in the Netherlands to adhere to their own cremation and burial traditions. Until the Act came into force, a sealed coffin had to be used at such ceremonies, but now an open coffin or cloths may be used if the rites call for it.

214. Under the auspices of the national advisory and consultative body on minorities policy, talks are held between ethnic minority organizations and the Government on the best way of dealing with matters which affect minority groups. In a letter of 21 May 1990 the minister responsible for coordinating minorities policy informed the Lower House of parliament that this body would be given a legal basis. To this extent a Minorities Policy (Advisory Bodies) Bill was presented to the Council of State in April 1991.

Minority language teaching

215. The policy document "Minority Languages" was presented to the Lower House of parliament in March 1991. As the title suggests, the document contained ideas on minority language teaching for those pupils who come under minorities policy and for pupils whose parents come from one of the other EU member States.

216. The key elements are:

(a) Pupils who so wish may be taught about their own culture and in their own language;

(b) Pupils may receive five hours of minority language teaching a week, 2.5 hours of which will be within the general curriculum (i.e. in conjunction with other lessons);

(c) During the first few years of school, the emphasis is on learning the Netherlands language (bilingual approach);

(d) Later on (in the senior forms), language instruction also includes cultural elements;

(e) In secondary schools, pupils may opt to study their mother tongue instead of another subject, or in addition to their other subjects;

(f) Pupils can currently take a Turkish or Arabic paper as part of their final examinations, and efforts will be made to introduce final examinations in the other minority languages currently taught.

Status of caravan-dwellers

217. Caravan-dwellers are native Netherlands nationals and gypsies with Netherlands nationality whose usual dwelling is a caravan. The right of this group to live in caravans is guaranteed by law. The Government provides the sites needed, including facilities (light and water, storage space, hard surfacing). There are currently 25,000 caravan-dwellers in the Netherlands who live in 8,500 caravans.

218. Traditionally, these caravans have been concentrated on large sites with their own schools, churches and community centres. However, since the early 1980s, more and more small sites (with a maximum of 15 caravans) have been opened in the middle of or near to normal residential areas. The children of caravan-dwellers living on these smaller sites attend the local school. Special projects have been set up to tackle unemployment among caravan-dwellers.

Status of gypsies

219. In 1977 and 1979 some 520 foreign gypsies were given legal permission to reside in the Netherlands. They received temporary residence permits. In the framework of general aliens policy, these individuals are treated in the same way as other aliens. After living in the Netherlands for 10 years they are entitled to a permanent residence permit, in so far as they have not become naturalized Netherlands nationals in the meantime.

220. In a more general sense, the Netherlands Government has always urged that solutions be found at European level to the legal problems regarding the admission, residence and readmission of travelling gypsies. The Netherlands' 1982 proposal for the formation of a special consultative body under the auspices of the Council of Europe was rejected. However, in 1985 the

Committee of Ministers of the Council of Europe decided to hold direct consultations between the States concerned on stateless gypsies, if the need arises. In Vienna in January 1991, the State Secretary for Justice once more drew the Council's attention to the position of stateless gypsies.

II. THE NETHERLANDS ANTILLES

A. Introduction

221. The report of the Netherlands Antilles is submitted in compliance with article 40 of the International Covenant on Civil and Political Rights, which entered into force for the entire Kingdom of the Netherlands, including the Netherlands Antilles, on 11 March 1979.

222. Owing to a delay in the submission of the report of the Netherlands Antilles, part IV of this report covers the second and the third reporting periods for the Netherlands Antilles. The second period runs from September 1981 to September 1986 and the third period from September 1986 to September 1991.

223. The report includes information relating to the period when Aruba was still part of the Netherlands Antilles (i.e. until 1 January 1986). Since 1 January 1986 the Kingdom of the Netherlands includes three countries, namely the Netherlands, the Netherlands Antilles and Aruba. The Kingdom is governed by the Charter for the Kingdom (Statuut). The Charter is a legal instrument *sui generis* and is based on the fundamental principle that in this constitutional order they will look after their internal interests autonomously and their common interests on a basis of equality and will accord each other reciprocal assistance.

224. Article 43 of the Charter provides that it is also the duty of each of the countries to promote observance of fundamental human rights and freedoms, legal certainty and proper administration.

225. The report of the Netherlands Antilles follows as closely as possible the guidelines laid down by the Committee (CCPR/C/20), the Manual on Human Rights Reporting (United Nations Publication, Sales No. E.91.XIV.1, and the comments of the Committee as contained in document CCPR/C/21/Rev. 1 of 19 May 1989.

B. Implementation of specific provisions of the Covenant

Article 1 - Right to self-determination

226. The Kingdom of the Netherlands has a constitutional monarchy and is a parliamentary democracy. The Queen is head of State and is represented in the Netherlands Antilles by the Governor. The Netherlands Antilles have an administrative structure of government and parliament at both central and island level.

227. The Government of the Netherlands Antilles (i.e. at central level) consists of the Governor and the Cabinet. The Netherlands Antilles now includes four island territories, each of which is autonomous as regards its own affairs. Each island therefore has an island government formed by the

Lieutenant Governor and the Executive. The parliamentary body at central level is the Staten and at island level the Island Council. The central parliament is elected every four years. In principle all nationals who have reached the age of 18 are entitled to vote and stand for election. The elections for the island councils are conducted in accordance with the same procedure as applies to the central parliament.

228. The electoral system therefore provides adequate guarantees for the right to self-determination for the Netherlands Antilles. This right was also explicitly recognized in top-level consultations between the Netherlands Antilles, the islands of the Netherlands Antilles and the Netherlands held at The Hague in October 1981. None of the countries or islands taking part in the conference opposed the exercise of the right to self-determination. Thus, agreement was reached on the right of the island populations to determine their own political future independently.

229. At a subsequent Round Table Conference between the Netherlands Antilles, the islands of the Netherlands Antilles and the Netherlands held at The Hague from 7 to 12 March 1983, it was established that Aruba would exercise its right of self-determination under the terms of a special plan. Aruba acquired a "separate status", i.e. the status of fully fledged country within the Kingdom, with effect from 1 January 1986.

230. The preamble to the Charter for the Kingdom of the Netherlands now provides as follows:

> "The Netherlands, the Netherlands Antilles and Aruba, noting that in 1954 the Netherlands, Surinam and the Netherlands Antilles freely expressed their will to establish a new constitutional order in the Kingdom of the Netherlands in which they will look after their internal interests autonomously and their common interests on a basis of equality and will accord each other reciprocal assistance, and resolved by mutual consent to establish the Charter for the Kingdom; noting that the ties with Surinam under Charter were terminated as of 25 November 1975 by means of an amendment to the Charter by Kingdom Act of 22 November 1975, Staatsblad No. 617 P.B.N.A. 233; considering that Aruba has freely expressed its will to accept the aforesaid constitutional order as a country for a transitional period leading to independence; have resolved by mutual consent to establish the Charter for the Kingdom as follows."

231. During the 1983 Round Table Conference it was also agreed that it would be necessary to make certain changes to the Constitution of the Netherlands Antilles owing to the secession of Aruba from the Netherlands Antilles. Moreover, a Cooperation Agreement could also be concluded in the first half of 1985 between the Netherlands Antilles and Aruba pursuant to article 38, paragraph 1, of the Charter (now recorded in PB 1985 No. 88).

Article 2 - Non-discrimination

232. The principle of equality is the foundation of the legal order, and is enshrined in article 3 of the Constitution of the Netherlands Antilles, which provides as follows: "All who are in the territory of the Netherlands Antilles have an equal right to protection of their person and goods."

Naturally, it is not only a matter of claims to protection of person and goods because the tenor of the article is that all individuals are equal before the law.

233. Article 94 of the Constitution of the Kingdom of the Netherlands, which applies to the entire Kingdom, also provides that statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions of international institutions. The national courts are entitled and indeed obliged to apply the international provisions, provided that they are of a self-executing nature and are therefore directly applicable in relations between Government and the individual.

234. Individuals who consider that they have in some way been accorded unequal treatment and thus discriminated against may have recourse to the courts. Individuals who cannot afford the cost of bringing an action before the courts have been able to obtain full legal aid since 1955. Originally, however, the obligation of the authorities to provide full legal aid to persons charged with a criminal offence was subject to a reservation. After this reservation was abolished in 1980, these people too became entitled to full legal aid.

235. Disputes between individuals and the authorities may sometimes be referred first of all to a higher administrative body by way of appeal. As it may be assumed that none of the forms of appeal to a higher administrative body available in the Netherlands Antilles is subject to such safeguards that it can be described as a procedure which excludes application to the courts, a court always has the last word on disputes. This was the decision of the European Court of Human Rights in the Benthem case on 23 October 1985. This case dealt with appeal to the Crown in the Netherlands, which is the equivalent of appeal to a higher administrative body in the Netherlands Antilles. It was held by the European Court in this case that the Netherlands' system of appeal to the Crown cannot be regarded as an independent and impartial judicial remedy.

236. The court in the Netherlands Antilles may be an ordinary court or an administrative court specially set up for this purpose.

237. If an individual considers that a government body has taken a decision which prejudices his interests under civil law in an unacceptable manner, he may institute proceedings before the ordinary courts to have this decision overturned.

238. The ordinary courts may be involved in four different ways in settling disputes arising from acts of the authorities.

239. **As a criminal court**. The ordinary courts take cognizance of all cases involving prosecutions which may result in the imposition of a punishment. A case instituted by the Public Prosecutions Department (Openbaar Ministerie) is intended to result in the conviction of the accused. The court must form an opinion on the extent to which the norm that has been infringed is binding. If the court concludes that the norm is not binding as it conflicts with a

provision of an international treaty that is binding on all persons, the accused is acquitted. In this way the ordinary courts play an important role in monitoring the lawfulness of legislation.

240. **As an administrative court designated in a special Act of the Netherlands Antilles**. Examples are article 19 of the Netherlands Antilles Islands Regulations (ERNA), under which the Court of Justice may decide on the admission of a member to the Island Council if the Council has itself failed to do so; article 11 of the Electoral Regulations, which gives the court of first instance the power to hear applications for amendments to the electoral register; section 18 of the Compulsory Purchase Act under which the court of first instance may make a compulsory purchase order and determine the compensation. Normally the courts are declared in these provisions to be competent to quash certain decisions of administrative bodies and to substitute their own decision, or to take decisions where a government body has failed or lacked the competence to do so.

241. **As an administrative court under article 103 of the Constitution of the Netherlands Antilles**. Article 103 provides that disputes on electoral law and other civil rights are within the jurisdiction of the ordinary courts if no other court has been designated by Act of the Netherlands Antilles. As this article has been elaborated by Act of the Netherlands Antilles, doubts have been raised in the case law as to whether it can indeed form the basis for the competence of the ordinary courts. The current case law is that since no other courts have been designated to hear this kind of case in the Netherlands Antilles, individuals should apply to the ordinary courts.

The administrative courts

242. In addition to the ordinary courts which sometimes act as administrative courts, the Netherlands Antilles also have special administrative courts. These are as follows: the Tax Tribunal, the Appeal Court for the Public Service, the Public Service Tribunal and the four tribunals that hear cases connected with the General Old Age Pension Act, the Accident Insurance Act, the Health Insurance Act and the General Widows' and Orphans' Insurance Act.

243. The function of these administrative courts is to determine the lawfulness of decisions taken under the various Acts. The grounds of review are:

(a) Conflict with the law, including the International Covenant on Civil and Political Rights;

(b) Conflict with the ban on abuse of power;

(c) Conflict with the ban on arbitrariness;

(d) Conflict with other generally recognized principles of proper administration.

Article 3 - Equal rights of men and women

244. Reference should be made here to the first report in which the Human Rights Committee was informed of the existing statutory regulations incorporating the principle of non-discrimination into the legal system of the Netherlands Antilles.

245. Since mid-1990 there have been new developments in relation to the application of the non-discrimination principle. The authorities have decided to apply the principle of equal pay for equal work, subject, however, to the criterion of the legal support obligation. The solution chosen by the Government is therefore based on the principle of the legal obligation to provide support. This means that anyone who can show that he has a legal obligation to provide support for his family is eligible for a salary rise of 20 per cent.

246. The Government has also decided to terminate the existing discrimination in relation to pension benefits. Anyone who has a legal obligation to maintain children and/or a spouse may pay contributions for a widow's or orphan's pension for these persons, as a result of which the relatives of a married or unmarried female public servant or an unmarried male public servant will, on the death of that public servant, be entitled to a pension (PB 1990, Nos. 50 and 52). At the same time, every public servant has been given the right to permanent employment with pension entitlement, regardless of his or her sex or marital status.

247. The right of the illegitimate children of unmarried public servants to free medical treatment was introduced in 1988, thereby ending the discrimination between legitimate children born to the parties to an existing marriage and the illegitimate children, whether or not acknowledged, of unmarried public servants.

248. Article 3 of the Constitution of the Netherlands Antilles provides that: "All who are in the territory of the Netherlands Antilles have an equal right to protection of their person and goods." The national laws of the Netherlands Antilles do not, however, contain provisions which make express mention of equal rights for men and women in matters of civil and political rights.

249. In order to guarantee these rights and implement article 3 of the International Covenant on Civil and Political Rights, it was necessary to list the various measures in the light of this provision. During this exercise it was discovered that the regulations governing the legal position of public servants and the Civil Code of the Netherlands Antilles in particular contained provisions which were less favourable for women than for men.

250. The Government and parliament are therefore in full agreement that every effort must be made to ensure that women are accorded equal rights. It was for this reason that the Kingdom of the Netherlands signed the Convention on the Elimination of All Forms of Discrimination against Women in 1980, which came into effect for the entire Kingdom, including the Netherlands Antilles on 22 August 1991.

251. The Women's and Humanitarian Affairs Office was established and is closely involved in defining the policy of the Government of the Netherlands Antilles towards women and the development process in the Netherlands Antilles. The involvement of this Office takes the form of providing information, support and coordination and participating in local and international meetings. The term "women and the development process" implies the removal of laws and government measures that discriminate against women and the introduction of laws and measures giving effect to obligations arising from the ratification of international treaties and membership of international organizations. An interdepartmental advisory group was set up to assist with the implementation of these responsibilities and is presided over by the above-mentioned Office. One of the functions of the Advisory Group is to inform the Government of any legislative alterations and changes and new laws that it considers necessary.

252. The Fifth Regional ECLAC Conference on the Integration of Women into Economic and Social Development, which was held in the Netherlands Antilles from 16 to 19 September 1991, contributed to the process of promoting equality of opportunity for men and women in the Netherlands Antilles. Reference should be made in this connection to article 2 above.

Article 4 - Restrictions on derogations from obligations under the Covenant

253. Article 137 of the Constitution of the Netherlands Antilles (Staatsblad 1955, No. 36 PB 32) provides that in order to maintain external or internal security in circumstances in which, in the event of war or threat of war or in the event of the disruption or likely disruption of internal order and peace, the interests of the Kingdom might be prejudiced, each part of the Netherlands Antilles may be declared to be in a state of war or under martial law. The manner in which such a declaration must be made and the consequences thereof are determined by Act of the Kingdom or regulations made under such an Act.

254. Paragraph 3 of this article states that provision may be made by regulation for the powers of the civil authorities in respect of public order and the police to be transferred either partly to other organs of the civil authorities or to the military authorities and how this is to be done. It also stipulates that if the powers are transferred to the military authorities, the civil authorities become subordinate to them in this respect. The same regulation also provides for exceptions to the freedom of the press under article 8 of the Constitution, and to the inviolability of the home (art. 107 of the Constitution) and of correspondence (art. 108 of the Constitution).

255. Article 138 also provides that the Governor of the Netherlands Antilles, who is the representative of the Kingdom, may, without prejudice to the provisions of article 137 of the Constitution, declare each part of the Netherlands Antilles to be in a state of war or under martial law in order to maintain internal security and public order. The way in which such a declaration is to be made and its consequences are to be determined by Act. Hereto it is possible to derogate from the provisions concerning the freedom of the press, the right of assembly, the inviolability of the home and of correspondence.

256. In the event of war, it is also possible to derogate from article 105 of the Constitution, paragraph 1 of which provides that "No one may be deprived of his legal rights against his will". Paragraph 2 reads: "The way in which disputes about the division of powers between the judiciary and other authorities are to be decided shall be regulated by Act."

257. Article 34 of the Charter for the Kingdom of the Netherlands (Act of 28 October 1954, S. 503) also refers to the fact that in the event of an emergency certain statutory measures should be taken which may even entail infringements of certain fundamental rights. This article is worded in the same way as article 137 of the Constitution of the Netherlands Antilles. It should be noted incidentally that as far as is known the provisions contained in the Constitution of the Netherlands Antilles and the Charter of the Kingdom of the Netherlands were not invoked either before or after the date on which the Covenant came into effect for the Netherlands Antilles.

Article 5 - Prohibition of narrow interpretation of the Covenant

258. The Constitution of the Netherlands Antilles contains provisions regarding civil and political rights in chapters 1, 7, 8 and 10. Since the Government of the Netherlands Antilles is bound by the obligations relating to civil and political rights contained in both European and United Nations conventions and it takes the view that these conventions should be viewed in their mutual context, the national regulations relating to fundamental rights will find substantial support in the international provisions. An important question which arises in this connection is the effect of the international fundamental rights, in other words the nature of the relationship between the national and international provisions.

259. Under article 66 of the Constitution which applies to the entire Kingdom of the Netherlands, international provisions take precedence over national provisions. The national courts are entitled and obliged to apply the international provisions, provided that they may be deemed from their nature and wording to be self-executing in the relationship between government and individual. The operation of fundamental rights in relationships under private law is acknowledged in the case law, although it has to be admitted that case law does not recognize that fundamental rights apply directly and in full in relationships between individuals under private law. This is not to say, however, that fundamental rights have no significance in the private law relations between individuals. Such rights do, therefore, have a certain effect in relation to third parties, but it is not direct or immediate.

260. The question of whether and, if so, to what extent fundamental rights may be made subject to limitations forms part of a larger problem. The Government of the Netherlands Antilles takes the view that fundamental rights may be made subject to limitations in order to protect the interests of society or the interests of other individuals. The problem is to determine the permissible extent of such limitations, bearing in mind that a broad position entails the risk that the rights may be undermined. And a narrow view may perhaps lead to conclusions which cannot be accepted for practical reasons. The Government is aware that these two positions are generally speaking mutually contradictory. The Government of the Netherlands Antilles would therefore very much welcome hearing any views which the Committee may have on this matter.

261. The national legislation in the Netherlands Antilles contains a limitation on the right of freedom of expression. Articles 143a/b/c of the Criminal Code of the Netherlands Antilles (PB 1918, No. 6) prohibit discrimination on the grounds of race, religion or other belief. The justification for this limitation is that the exercise of fundamental rights should be weighed against the interests of society as a whole and the interests and fundamental rights of other individuals.

262. It is assumed in this connection that the limitations made within the scope of article 4 of the Covenant should be regarded in their mutual context.

Article 6 - Right to life

263. The Netherlands Antilles are now bound by the obligations resulting from the Sixth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, pertaining to the abolition of the death penalty (Strasbourg, 28 April 1983).

264. Under article 1 of the Protocol no one may be sentenced to death or executed. Article 2 of the Protocol contains a provision allowing member States to include the death penalty in their national legislation for offences committed in wartime or when there is an imminent threat of war. The Criminal Code of the Netherlands Antilles contains two articles (art. 103 and 108) providing for the death penalty in the case of certain offences committed in wartime.

265. However, it is over 140 years since the last death sentence was carried out (8 March 1848). Although the death sentence was imposed on subsequent occasions (most recently in 1954 in the Sophia Case by the Court of Justice, 27 April 1954), it was always commuted to another sentence by way of pardon.

266. A Commission under the chairmanship of W.C. de la Try Ellis was appointed after 1955 to advise the Government on whether there were grounds for abolishing the death penalty in the Netherlands Antilles. Subsequently, the death penalty was abolished by Act of 28 November 1957, PB 156, except for the offences defined in article 103, paragraph 2, and article 108, paragraph 3, of the Criminal Code of the Netherlands Antilles.

267. Since a civilian who aided the enemy in time of war could not be punished in the Netherlands Antilles by a military court under military law, the Government considered it desirable to retain the death penalty in these cases in the Criminal Code. Owing to the recent abolition of the death penalty in military law, the same argument now applies in reverse (PB 1990 No. 65). As there is every reason for abolishing the penalty altogether in ordinary criminal law too, the Government proposes to do this during the revision of the Criminal Code of the Netherlands Antilles.

Article 7 - Prohibition of torture

268. Article 3 of the Constitution of the Netherlands Antilles contains a basic provision which may be invoked by any person in the territory of the Netherlands Antilles in order to protect his or her person. This right is not limited by national regulations and/or measures.

269. The national legislation of the Netherlands Antilles does not, however, refer expressly to the terms torture or cruel, inhuman or degrading punishment. None the less, the Criminal Code of the Netherlands Antilles does contain general provisions relating to offences against personal liberty, (art. 287-289) and relating to offences against life (arts. 300-322) which are applicable to the area covered by article 1, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the present article of the Covenant. The Convention against Torture came into effect for the entire Kingdom on 20 January 1989. The articles in the Criminal Code referred to above specify that the relevant offences carry life sentences or determinate prison sentences of up to 20 years, depending on the nature of the offence. An attempt to commit torture or an attempt to participate in or be an accessory to acts which come within this definition in the International Covenant on Civil and Political Rights is also covered by these provisions of the Criminal Code.

270. In addition to the statutory provisions mentioned above, instructions and guidelines have also been issued to regulate police action in endeavouring to enforce the law in an acceptable manner. In the event of an increase in crime, the possibility cannot therefore be excluded that in the lawful exercise of their duties police officers will more frequently find themselves in situations in which they are forced to make use of the powers conferred on them by virtue of their office, for want of any other way of achieving the object of the law. The function of the police is regulated in the Police Regulations (PB 1962 No. 64). However, provisions are also contained in other laws such as the Criminal Code and the Code of Criminal Procedure, which define rules and procedures in detail. In the Netherlands Antilles police action can therefore be said to be legalized yet at the same time constrained by statutory rules and sanctions. Examples of these rules are the Act governing Substantive Public Service Law, the Instructions governing the Use of Force by the Police, the General Service Regulations for Police Officers and the Instructions on the Use of Arms.

271. A victim of torture may bring a civil action on the basis of the unlawfulness of the act. In addition, individuals may submit a complaint to the Complaints Committees for the relevant island territories, namely the Complaints Committees for the actions of police officers in Curaçao (PB 1985 No. 143) and in the Windward Islands (PB 1987 No. 120).

272. Since the beginning of 1991 the remand centre has been visited at least once a week by a member of the Public Prosecutor's Office with a view to preventive action and to improving the infrastructure in order to satisfy the international commitments. This ensures that the shared responsibility of the Public Prosecutions Department for executing prison sentences is properly discharged.

273. If prisoners have a complaint about matters relating to a prison establishment, they may apply individually or collectively to a Supervisory Committee for Prisons and Remand Centres (set up by a Decree of the Netherlands Antilles containing General Measures, of 29 November 1962, PB 1962 No. 160).

274. At the suggestion of the Minister of Justice a committee (the Rômer Committee) was established by Decree of the Netherlands Antilles of 9 August 1991, No. 2, to institute an investigation into the conduct of all parts of the police force of the Netherlands Antilles towards individuals and, if it should discover unlawful acts, to make recommendations to the Government for ensuring the proper discharge of the duties of the police force. The Government also gave instructions for an evaluation of the functioning of the Curaçao Police Complaints Committee by Decree of 12 November 1985 (No. 25, PB 1985 No. 143).

275. The Rômer Committee of Investigation has taken cognizance of a report published in 1982 by the Research and Documentation Centre (WODC) of the Netherlands Ministry of Justice, partly at the request of the then Minister for Netherlands Antillean Affairs. The report concerned a verbatim survey carried out in Aruba (which was then part of the Netherlands Antilles), Curaçao, Bonaire and St. Martin. There is now felt to be a need to carry out this survey again, or to establish a comparable survey that concentrates on instances of the use of force by the police.

276. By means of cooperation between the WODC and the Rômer Committee, the Government wishes to obtain clear information on three matters: (i) the extent of crime; (ii) the causes of the increase in crime (compared with ten years ago); (iii) the extent to which force is used by the police.

277. The Government believes that the function of the police in the Netherlands Antilles is to maintain public order and to solve crime. In carrying out these duties, the police will inevitably have to use force on some occasions. The police are also authorized to do so, provided that the force is in proportion to the object for which it is used. In other words, the police's monopoly on the use of force is limited by the principles of subsidiarity and proportionality.

278. It is clear from the above that any study of the use of force or violence by the police must start with the way in which it is used operationally. The term "violence" should therefore be broadly defined, for example as all (police) acts which adversely affect the mental or physical state of individuals and which cannot be regarded as part of the lawful discharge of the duties of the police. Violence therefore consists both of excessive use of what is in principle legitimate force and of acts that constitute unlawful force from the outset.

Article 8 - Prohibition of slavery

279. With reference to what was said in the first Kingdom report on article 8, it should now be noted that, pursuant to the provisions of ILO Convention 105 on the abolition of forced labour, changes were made by Act of the Netherlands Antilles of 7 November 1986 (PB 1986, No. 154) to certain provisions of the Criminal Code which provided that failure by a member of a ship's crew to perform a contract of employment entered into by him was punishable as desertion or refusal to obey orders. According to the Explanatory Memorandum, the change means "that deliberate acts and omissions contrary to an obligation to which the crew member is subject under a contract of employment will in future be punishable only if they endanger the safety of

those on board or of the vessel or its cargo". In addition, article 404 of the Criminal Code, which provides that the master of a vessel is criminally liable if he deliberately and unlawfully absents himself from his vessel during the voyage, was redrafted.

280. In 1989 the ILO Committee of Experts made a request to the Government of the Netherlands Antilles in respect of article 405 of the Criminal Code. This article reads as follows: "A crew member who, contrary to his obligations under a contract of employment, evades his duties on board a ship of the Netherlands Antilles or the Netherlands shall be liable to a term of imprisonment not exceeding one year as being guilty of desertion, if danger to the ship, those on board or the cargo was feared as a result of the circumstances in which so acted." The matter is currently being considered in the Netherlands Antilles

Article 9 - Right to liberty and security of person

281. Reference should also be made in this connection to what was said in the previous report. Although no explicit reference is made either to the principle of liberty or to the right to security of person in the Constitution of the Netherlands Antilles, they are adequately safeguarded by articles 3 and 24, paragraph 2, of the Constitution. Personal liberty cannot be curtailed by any authority other than the legislature.

282. Article 101 of the Constitution also provides a guarantee that punishments may be imposed only by the court designated for this purpose by Act of the Netherlands Antilles. The Constitution makes no mention of what these sentences may be. This is left to the legislature. The Constitution merely provides in article 102 that forfeiture of all civil rights and confiscation of all goods are excluded as possible sentences. As far as restrictions on liberty are concerned, the legal system of the Netherlands Antilles applies pre-trial custodial measures. The most far-reaching of these measures under the law of criminal procedure entail an infringement of the right to liberty. These measures include stopping a suspect, arrest and detention for hearing, police custody and successive stages of remand in custody. They are regulated in Title 1 ("Concerning the detection of offences") of the Criminal Code of the Netherlands Antilles.

283. Deprivation of liberty is permitted only in the cases specified by law, namely: (i) pursuant to a judicial conviction; (ii) on account of a failure to comply with a judicial order; (iii) by way of remand in custody; (iv) if necessary in order to intervene in the upbringing of minors; (v) for the purpose of isolation in the case of contagious diseases or mental illness; (vi) for the purpose of extradition or expulsion.

284. As regards the second paragraph of this article, reference should be made to the relevant part of the first report.

285. The present Criminal Code sets the duration of police custody at 4 days, with the possibility of an extension to a total of 10 days. This has been altered in the draft of the new Criminal Code for the Netherlands Antilles.

Other proposed changes are connected with the desirability of supervision and the lawful use of the time during which a suspect may be placed and detained in police custody.

286. An order for police custody made by an assistant public prosecutor may remain in force for not more than two days, after which it may be extended by the public prosecutor for a maximum of six days if this is urgently necessary in the interests of the investigation. The review to be performed by the public prosecutor has therefore been brought forward by two days in the new draft.

287. The suspect must be brought before the examining magistrate as quickly as possible but no later than within 24 hours of the moment when the public prosecutor has ordered the extension of the custody. The suspect's counsel may be present at the hearing and may speak on his behalf. The obligation to bring a suspect promptly before a judge is laid down in article 5, paragraph 3, of the European Convention on Human Rights. It may be assumed that the proposed arrangement satisfies the standards for a "prompt" hearing as laid down in accordance with the judgement of the European Court of Human Rights of 22 May 1984 (NJ 1986, 507). It goes without saying that the public prosecutor may bring the suspect before a judge at an earlier stage, for example if he believes that the suspect should be remanded in custody immediately after his arrest, but he may also do so at an earlier stage of the police custody.

288. From the time that the order for police custody is made by the assistant public prosecutor, the suspect should be brought before the examining magistrate "as quickly as possible", in other words as soon as the police have processed the investigation in such a way that the examining magistrate is able to form a reasonable opinion on the basis of them. It is not necessary that the police should have gathered sufficient evidence to secure a conviction by the time that the suspect is brought before the examining magistrate. What they need to show is prima facie evidence for suspicion and adequate grounds for ordering police custody. If necessary, the evidence may be amplified orally by the police.

289. The shortening of the period, to which the police organization and procedures must still be adapted, means that the character of the review by the court depends on the period that has elapsed since the arrest and the position of the investigation at the time the suspect is brought before the court, in other words on what the police have reasonably been unable to discover in the short time available. The review by the examining magistrate is negative in the sense that he assesses on the basis of the available information whether continuation of the police custody is not contrary to the interests of the investigation. If he considers that there are insufficient grounds for a continuation, the suspect must be released. Otherwise the order for police custody remains in force. The proposed arrangement therefore assumes that the assistant public prosecutor and the public prosecutor decide on the police custody and its continuation unless the examining magistrate rules otherwise. The examining magistrate takes his decision on the basis of the statutory provisions. In the first place he must assess whether the offence comes within the category of offences for which remand in custody is allowed. Thereafter it is necessary to decide during the first two days of

the police custody whether there are sufficient grounds for deprivation of liberty in the interests of the investigation and, after these two days (i.e. after the extension), whether urgent grounds exist.

290. The interests of the investigation include further interrogation of the suspect, a confrontation with witnesses, the prevention of collusion and the collection of evidence other than the suspect's statement. The need to collect evidence may cease if the suspect confesses. However, police custody may never be used as a means of extracting a confession from the suspect (or for that matter as a way of ensuring "a down payment" on the expected sentence). The purpose of police custody is to enable the Public Prosecutor and Assistant Public Prosecutor to exercise their right to keep the suspect available in order to carry out the requisite investigation properly and, more particularly, to be able to assess whether the suspect should be remanded in custody. The latter means that it may be in the interests of the investigation to examine whether there are any grounds for ordering a remand in custody. It also means that if such grounds do exist the suspect must be brought before the Public Prosecutor as quickly as possible after police custody ceases to be in the interests of the investigation. Police custody for all or part of the permissible period is not obligatory as a preliminary to remand in custody.

291. Throughout the entire period of police custody the suspect is entitled to apply to a judge on his own initiative to request his release. This is entirely separate from the procedure whereby he is brought before the examining magistrate. The European Convention on Human Rights draws a distinction between the obligation of the authorities to ensure that every suspect who has been arrested or detained is brought promptly before a judge and the right of a suspect to institute proceedings by which the lawfulness of his detention is speedily decided and his release ordered if the detention is not lawful. The European Court of Human Rights held in its above-mentioned judgement (NJ 1986, 507) that the meaning of paragraph 4 is independent of that of paragraph 3. This is why the new Code makes provision for a special procedure enabling a person in police custody to apply to the examining magistrate for his release. Once again, the examining magistrate orders immediate release if he considers that the deprivation of liberty is unlawful.

292. The present criminal procedure is therefore formally regulated in the current Code of Criminal Procedure (PB 1918, No. 6), but in practice the provisions are interpreted in the manner most favourable to the suspect in view of the various international conventions which apply to the Netherlands Antilles and in anticipation of the entry into effect of the new Criminal Code.

Article 10 - Treatment of persons deprived of their liberty

293. The principle underlying paragraph 1 forms the basis of the statutory rules regarding people who have been deprived of their liberty. This is because it is right that special provisions should be made for people who have been lawfully detained. Persons who have been convicted of an offence or are suspected of an offence are subject to the provisions of the Prisons Act, the Prisons Decree and the Juvenile Detention Act.

294. Article 26 of the Criminal Code of the Netherlands Antilles provides that the establishments where imprisonment or detention (i.e. a lighter form of imprisonment) is to be served must be designated by statute. This was done by the General Act of 6 October 1930 for the designation of prisons (where imprisonment or detention is served) and for the establishment of the principles of the prison system (PB 1930 No. 73, as amended). This Act distinguished between two categories of institution, namely prisons and remand centres. The former were intended for persons serving terms of civil or military imprisonment in excess of eight months. The latter were for people serving prison sentences of eight months or less, people sentenced to detention, persons remanded in custody, persons imprisoned for civil debt, persons under arrest if there is no room for them in police cells, and persons awaiting extradition or expulsion if their detention has been ordered by the authorities.

295. The regime of the institution - which is interpreted as meaning the entirety of rules imposed from above which apply to the prisoners and the way in which they are applied - is specified in the following statutory regulations:

> The Decree of 6 February 1931 (PB 1931 No. 19) referred to in article 26 of the Criminal Code of the Netherlands Antilles (current text in PB 1958 No. 18);
>
> The decision of 6 May 1931 No. 594 (PB 1931 No. 30) containing the regulations for the prison and the remand centres (current text in PB 1958 No. 19);
>
> The Decree of 29 November 1962 containing general measures relating to the Supervisory Committee for the Prison and the Remand Centres (PB 1962 No. 160).

296. Life in the institutions where the prisoners are kept is governed by this body of regulations. They cover a wide range of subjects including accommodation (in community or segregated), work, relaxation, prison visits, correspondence, medical and social facilities, sport and outdoor exercise, and disciplinary punishments.

297. Penal establishments are located in three of the five island territories of the Netherlands Antilles. The prison and remand centre in Curaçao and St. Martin are in the same building, but the remand centre is in a separate wing. This is in accordance with article 23 of the Criminal Code of the Netherlands Antilles, paragraph 1 of which provides that "Imprisonment and detention may be served in the same institution, provided that they are served in separate wings."

298. The prison and remand centre have several wings: a juvenile wing for prisoners aged 16-21; a remand wing for persons awaiting trial; a wing for persons serving short sentences (up to nine months); the most recent addition is the Forensic Observation and Counselling Wing (FOBA), which was officially opened on 2 March 1990. This is subdivided into two sections, namely an observation section with five cells and a counselling section with nine cells. All the FOBA cells are one-person cells. The project is intended to have a

positive effect on the atmosphere of the prison, which is considered to be of importance to the inmates. The principle adopted by FOBA is that the patient should be out of the cell as much as possible and should be kept occupied in the most worthwhile way possible in order to prevent regression and aggression. The annual report for 1990 shows that there were 35 admissions in that year. The following table provides a survey of where the patients went after being discharged from the FOBA:

Discharged to:	
Prison	11
Home	8
Capriles Clinic	4
Half-way house	2
Still in FOBA on 1 January 1991	10

Source: 1990 Annual Report, Forensic Observation and Counselling Department, FOBA/ANTIAS

299. The above-mentioned General Act of 6 October 1930 contains more than a designation of the penal institutions. It also states that the prison and remand centre in Curaçao are managed by a director. On the other islands there is a head who is accountable to this director.

300. The instructions for these officials are drawn up by the Minister of Justice. The Act also provides that the staff of the prison and remand centre are appointed, suspended and dismissed by the Governor. Sections 9, 10 and 11 of the Act specify the various categories of prisoner who must be kept separate from one another. Men and women may never be placed in the same room or area and the same goes for remand prisoners and convicted prisoners. Convicted children are kept separate from adults in the prisons.

301. The prisoners are divided by the director into categories, mainly on the basis of their past record, their behaviour and the offence for which they have been convicted. Wherever possible, account is taken of the age and educational level of the prisoner as well as of the duration of the sentence, everything being taken in its mutual context.

302. If the content of the Act of 6 October 1930 (PB 1930 No. 73), as amended, is assessed by reference to the principles of modern penology, it can be seen that the Act, which sets out the principles underlying the prison system in the Netherlands Antilles, is outdated. This is why a bill to revise the law on these principles was recently presented to parliament.

303. The Act on juvenile detention contains principles and regulations relating to measures in respect of young people. Male minors may be placed "at the disposal of the Government" or taken into care either under the criminal law (pursuant to art. 41 of the Criminal Code) or under civil law (under art. 347 of the Civil Code of the Netherlands Antilles).

304. The Netherlands Antilles has a single penal institution for juveniles. This is the Government Educational Home (GOG) which is operated by the Government of the Netherlands Antilles and consists of five open pavilions and one closed wing. The institution can hold a total of 80 juveniles. Application for a juvenile to be admitted to the Educational Home may be made to the Guardianship Council by both authorities and individuals who consider that such an admission is required as a matter of urgency. The Council then investigates the necessity of admission to the Educational Home. If the Council concludes that admission is the best course of action, it must make a documented and reasoned application to the Juvenile Court for admission.

305. As far as education and upbringing is concerned, every attempt is made to place the inmates in external schools. Where this is not possible, the Educational Home offers both individual primary education and individual technical education.

306. On the basis of the findings during the observation period the Juvenile Court may order definite admission to the Educational Home (under art. 356 of the Civil Code of the Netherlands Antilles). The duration of the admission is set at not more than one year and may be extended by the Juvenile Court for a year at a time or shortened at any time. A "definite" admission of this kind means that the Educational Home takes over responsibility for the upbringing of the child from its parents. It goes without saying that the upbringing, education and rehabilitation of boys of such a critical age is a heavy responsibility, particularly since they are often of a very difficult disposition and have serious behavioural problems that require expert help. The teaching staff therefore have to satisfy strict requirements as regards both their educational background and their personality.

Article 11 - Prohibition of detention for inability to fulfil a contractual obligation

307. Reference should be made in this connection to the first report. What is mentioned in the Aruban report in this region applies equally to the Netherlands Antilles.

Article 12 - Right to leave one's country

308. Reference should be made here to the first report.

Article 13 - Prohibition of expulsion without legal guarantees

309. The Act on admission and expulsion of 24 April 1962 (PB 1962 No. 60) provides the basis for the present regulations governing aliens. Over the years the law has been changed on various occasions, most recently by Act of 17 July 1986 (PB 1986 No. 96). Further regulations were laid down by the Decree of 17 January 1973 containing general measures (Admission Decree).

310. The basic principle of the 1962 Act is that no one may be admitted to the Netherlands Antilles without a residence or temporary residence permit. Permits may be granted for a determinate or indeterminate period pursuant to section 6, subsections 1-3, of the Act. The granting, refusal or cancellation of a permit is effected by or on behalf of the Minister of Justice.

311. A permit may be granted subject to certain conditions such as the practice of a particular profession or employment with a particular employer (under section 6 of the 1962 Act and art. 3 et. seq. of the Admission Decree). These conditions may not be altered to the detriment of the permit holder during the validity of the permit. If the authorities wish to make an alteration to the detriment of the permit holder, the old permit must first be cancelled and a new permit granted. In this way it is assured that the person concerned can appeal to a higher administrative body (Court of Justice, 13 March 1984, case concerning a domestic servant who lived in). Admission for residence or temporary residence ends, inter alia, when the person concerned leaves the Netherlands Antilles or resides outside the Netherlands Antilles for a continuous period of more than a year (except, according to the Joint Court of Justice, in the case of force majeure, 21 May 1991, case of a management permit for Aruba) or as a result of cancellation of the residence permit or of expulsion pursuant to section 12 of the 1962 Act.

312. Section 15 of the 1962 Act contains a general provision on expulsion. The spirit of this section is entirely in accordance with this provision of the Covenant.

313. The authorities have two possible ways of enforcing the law on aliens: they may either expel or deport people who are present in the territory of the Netherlands Antilles illegally. However, the difference between these two powers is vague.

314. The power of expulsion pursuant to an order of the Procurator General may be used in the case of persons who were formerly authorized to reside in the Netherlands Antilles and who do not leave despite being given notice to do so after their right of residence has terminated. It may also be used in respect of persons whose admission could not be refused but whose stay is not considered desirable on the grounds of public morals, public order or public safety.

315. Deportation is used mainly in the case of people who have entered the Netherlands Antilles illegally. This power is exercised by the Lieutenant Governor. Unlike expulsion, deportation may be regarded as a measure for preserving order. Expulsion, however, should be seen as a form of coercion in the context of the ordinary policy on admissions and expulsions. This is because the possibility exists to appeal to a higher administrative body against an order for expulsion and/or an order for detention in custody pending expulsion. Such appeals are regulated in sections 17 and 18 of the 1962 Act.

316. It should be noted for the record that the Joint Court of Justice held on 20 December 1988 that detention in custody for the purpose of deportation or expulsion passes the test of article 5, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms since interim injunction proceedings provide people who have been placed in detention pending deportation with every opportunity to apply to the civil courts without delay to have the legality of the detention checked. This part of the judgement was upheld by the Supreme Court of the Netherlands on 21 December 1990.

Article 14 - Entitlement to a fair and public hearing

317. This article sets out the principles of a fair trial. Reference should therefore be made to the contents of the first report.

318. With regard to paragraph 1 it should be noted that justice is pronounced in the name of the Queen in the Netherlands Antilles, pursuant to article 97 of the Constitution of the Netherlands Antilles. This means that under the articles in part 2 of the Constitution of the Netherlands Antilles the President and the members of the Court of Justice are appointed and dismissed by the Queen.

319. The judiciary takes cognizance of all disputes of a civil nature. Pursuant to article 101 of the Constitution of the Netherlands Antilles no prosecution for a criminal offence may be brought before a court other than the court designated by Act of the Netherlands Antilles and in the manner determined by Act of the Netherlands Antilles.

320. Under article 104 of the Constitution, all judgements should contain a statement of the grounds on which they were given and, in criminal cases, a statement of the articles of the statutory regulations on which the conviction is based. The judgements must be pronounced in open court. Where the Public Prosecutions Department brings a case which is intended to result in the conviction of the accused, the court must determine whether the norm that has been infringed is binding. If the court comes to the conclusion that the regulation concerned is not binding, for example because it is contrary to a provision of an international convention that is binding on all persons, the accused must be acquitted. In this way, the ordinary courts play an important role in reviewing the lawfulness of legislation. Fundamental rights are to a large extent enforced in this way in the Netherlands Antilles.

321. The basic principle of the law in general and of the criminal law in particular is contained in article 1, paragraph 1, of the Criminal Code of the Netherlands Antilles: "No offence is punishable unless it was an offence under the law at the time it was committed." In other words, the act of which the defendant is accused must constitute a criminal offence if the court is to be able to convict.

322. Article 50 of the Code of Criminal Procedure of the Netherlands Antilles provides that a person will be treated as a suspect if there is a reasonable suspicion from facts or circumstances that he is guilty of a criminal offence. It follows from article 74 of the Code of Criminal Procedure that "if there is not sufficient indication regarding the nature of the offence, the commission of the offence or the guilt of the suspect, he (the judge) must either refuse permission to prosecute and acquit the defendant or order the continuation of the preliminary investigation".

323. As regards the different rights included in paragraph 3:

(a) Part (a): pursuant to article 62 of the Code of Criminal Procedure of the Netherlands Antilles, the examining magistrate is empowered to appoint an interpreter in order to inform the suspect of the nature and cause of the charge against him. The interpreter also assists any witnesses who may be called;

(b) Part (b): pursuant to articles 50 bis, 50 ter and 50 sexies of the Code of Criminal Procedure of the Netherlands Antilles, the suspect is entitled to be assisted by one or more counsel of his own choosing. Counsel has unrestricted access to the suspect, and may talk to the suspect alone and correspond with him without the contents of the letters being read by other persons;

(c) Part (c): explained previously in relation to article 9 of the International Covenant;

(d) Parts (d)/(e)/(f): similar provisions are contained in Titles 2 and 4 respectively of the Code of Criminal Procedure of the Netherlands Antilles;

(e) Part (g): at the trial the court must be convinced by certain lawful evidence (under art. 302 of the Code of Criminal Procedure) that the defendant has committed the offence with which he is charged.

324. This is the negative, statutory system of evidence: statutory because certain evidence designated by law must be present pursuant to article 302 of the Code of Criminal Procedure of the Netherlands Antilles; negative because the court need not yet convict if it has not been convinced of the guilt, pursuant to article 301 of the Code of Criminal Procedure of the Netherlands Antilles.

325. It is a matter not of the formal but of the substantive truth. By far the most important form of evidence in criminal cases in the Netherlands Antilles is a witness statement or deposition. Witnesses may be heard and the examining magistrate may compel the attendance of a witness by means of special statutory forms of coercion. All this shows how much importance is attached by the legislature in the Netherlands Antilles to witness statements as evidence. However, there are no provisions which make it possible for the forms of coercion referred to above to be used in order to compel a suspect to testify against himself.

326. As regards paragraph 4, reference should be made to article 38, paragraph 2, in conjunction with article 67 of the Code of Criminal Procedure of the Netherlands Antilles.

327. Title 6 of the Code of Criminal Procedure of the Netherlands Antilles contains provisions for appealing against judgements given by courts of first instance (art 216 et seq.). The highest court in the Netherlands Antilles is the Joint Court of Justice for the Netherlands Antilles and Aruba.

328. Article 1 of the Cassation Regulations for the Netherlands Antilles (PB 1961 No. 42) provided that as regards civil and criminal cases in the Netherlands Antilles, the Supreme Court of the Netherlands, save where provided otherwise in a Kingdom Act, takes cognizance of appeals in cassation instituted either by the parties or "in the interests of the law"

by the Procurator General at the Supreme Court in corresponding cases, in a corresponding manner and with corresponding consequences in law.

329. The main aim of cassation is to guarantee uniformity in the administration of justice in the Kingdom of the Netherlands. In other words, the object of cassation proceedings is to allow the highest court in the Kingdom (i.e. the Supreme Court) to draw up rules which cover not only the case referred to it but also a large number of other cases.

330. Title 3 of the Code of Criminal Procedure of the Netherlands Antilles ("Concerning compensation for custody wrongly served") contains provisions governing the right to compensation where a person has been wrongly convicted owing to a miscarriage of justice, as referred to in paragraph 6 of article 14.

331. As regards the *ne bis in idem* principle contained in paragraph 7, the reservation made by the Kingdom also applies to the Netherlands Antilles.

Article 15 - Principle of nulla poena sine preavia lege poenali

332. It should be noted that it was wrongly stated in the first report that the *nulla poena sine praevia lege poenali* principle as contained in this article was included in the Code of Criminal Procedure of the Netherlands Antilles. The relevant principle is in fact contained in article 1 of the Criminal Code of the Netherlands Antilles, the text of which reads as follows: "No offence is punishable unless it was an offence under the law at the time it was committed. If there is a change in the law after the offence has been committed, the most favourable provisions shall be applied to the suspect."

Article 16 - Right to recognition as a person before the law

333. In addition to what was said in this respect in the first report, it should be noted not only that the legal system in the Netherlands Antilles recognizes every individual as a person before the law and confers on every individual the capacity to exercise rights and enter into obligations, but also that the Civil Code of the Netherlands Antilles confers on an unborn child the status of "person before the law" whenever this is in the interest of the child. (See also under art. 24.)

334. The first report discussed article 54 of the Constitution of the Netherlands Antilles. This article of the Constitution provides that members of parliament lose their seat if they lose the free enjoyment of their civil rights, which is contrary to both article 102 of the Constitution and article 16 of the Covenant. However, no amendments have yet been made in this connection. It should be noted for the record that article 54 of the Constitution has never been applied and should be regarded as one of the very outdated provisions of the Constitution of the Netherlands Antilles.

Article 17 - Right to privacy

335. Reference should be made to the first report as regards the right to privacy contained in this article. The Constitution of the Netherlands Antilles dates from 1954 and was revised in 1968. The present text contains

no general provision regarding the privacy principle. Articles 107 and 108 provide protection against interference with the home and correspondence respectively. The right to protection against interference with correspondence in the Netherlands Antilles applies only to letters which are delivered by the postal service.

336. Privacy protection is also regulated in other national laws. For example, articles 144 and 368 of the Criminal Code provide that unlawfully entering a dwelling against the will of the occupant is a criminal offence. Article 207 of the Criminal Code states that a public servant who unlawfully interferes with correspondence is guilty of an offence. There is currently a bill before parliament (Bill to amend the Code of Criminal Procedure of the Netherlands Antilles, parliament of the Netherlands Antilles, 1990-1991 session, Bill No. 2 and No. 3) to extend the offence of unlawful interference with correspondence to any person who is guilty of such an act.

337. The Criminal Code lacks any modern provisions to prevent the use of advanced technology to tap telephones and take intrusive photographs. Fortunately, however, a bill to regulate this was presented during the 1990-1991 session. It also provides that unlawfully obtaining data from a telecommunications infrastructure is a criminal offence. The Explanatory Memorandum shows that the term "telecommunications infrastructure" includes telex and telefax. One of the reasons for these provisions was the need to combat crime and in particular drug trafficking. Rules were considered necessary which would allow telephones and other means of communication to be tapped for the purpose of a criminal investigation yet at the same time impose a general prohibition.

338. The Government believes, however, that it is rather illogical to create a special criminal offence of tapping telephone calls yet not introduce a general provision. As the law stands at present, tapping and recording telephone calls is not a criminal offence under any general Act currently in force in the Netherlands Antilles.

339. The Bill will be a further step in the right direction for the protection of privacy in the legislation of the Netherlands Antilles. The present Criminal Code of the Netherlands Antilles not only protects the aspects of privacy referred to above but also makes it a criminal offence to violate a professional or official duty of secrecy (art. 285). If information is passed on contrary to this duty of secrecy, this may therefore be punished under the criminal law.

340. Like the Constitution, the Civil Code of the Netherlands Antilles does not contain any articles which specifically protect privacy. The protection of privacy under the civil law can be based here on article 1382 of the Civil Code of the Netherlands Antilles (action in tort). It should be pointed out in this connection, however, that owing to a ruling of the Supreme Court in its judgement of 9 January 1987 (AB 1987 No. 231) article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (in force for the entire Kingdom) also applies to relations between individuals. In principle, therefore, an infringement of this right constitutes a tort within the meaning of article 1382 of the Civil Code of the Netherlands Antilles.

341. Other specific Acts which contain protective provisions are: the 1913 Copyright Act (PB 1913 No. 3, amended by PB 1975 No. 70); the 1968 Act governing Justice System Documentation and certificates of good behaviour (PB 1968 No. 213).

Article 18 - Freedom of religion and belief

342. Freedom of thought, conscience and religion is regulated in articles 123-127 of the Constitution of the Netherlands Antilles.

343. Freedom of thought is understood to comprise the freedom of any person to worship in accordance with his conscience; the freedom of parents to raise their children in the religion of their choosing; the freedom of any person to change his religion; the freedom to preach, teach, publish, instruct and to perform social and charitable work and to found organizations and to acquire and hold possessions for these purposes.

344. Article 123, paragraph 2, provides that this freedom is "subject to the protection of society and its members against infringement of the criminal law". Another constraint is contained in article 125, which reads as follows: "The Governor shall ensure that all religious associations and communities keep within the bounds of obedience and abide by the statutory provisions and the prescribed powers". Clearly, therefore, this freedom is subject to external constraints. It follows that freedom of religion does not imply that a person is free to assess the law by reference to his religious beliefs and not to observe it if he finds that it conflicts with these beliefs.

345. The essence of freedom of religion therefore lies in the provision that the right to manifest one's religion may not be subject to restrictions of a political, economic or social nature imposed by laws or administrative regulations. The right to manifest one's religion may not be subject to regulation if this would thereby limit such manifestation. In other words, this article of the Covenant gives precedence to the right to freedom of religion, provided that it may be made subject by statute to restrictions in the interests of public safety, order and morals.

346. Article 70 of the Decree of 6 February 1931 (PB 1958 No. 18) provides that those in charge of a penal establishment should arrange for religious services to be conducted for the prisoners. The majority of the population are practising Roman Catholics. Once a week both a Roman Catholic and a Protestant service are conducted by clergymen who work part time for the institutions. The prisoners are allowed to attend the service of their faith.

347. In addition to attending church services, prisoners may also receive religious instruction and, if desired, attend Bible classes, pursuant to article 71 of the Decree of 5 February 1931 (PB 1958 No. 18).

Article 19 - Freedom of expression

348. Reference should be made in this connection to the first report. It should be added that article 7 of the Decree of 15 October 1955 (PB 1955 No. 115) implementing section 2 of the Telegraph and Telephone Act of 1909 was revoked by the Decree of 27 March containing general measures. This means

that communications, speeches and other radio programmes are no longer subject to the restriction. The above provision is now in accordance with this article of the Covenant.

Article 20 - Prohibition of war propaganda

349. Reference should be made in this connection to the first report. The prohibition of advocacy of discrimination as contained in the second paragraph of this article has not yet been incorporated in national legislation. The Government is fully aware of the need to draft the required legislation in order to comply with this provision of the Covenant. Amendment of national legislation to take account of this prohibition can take place during the overall revision of the Criminal Code of the Netherlands Antilles.

Article 21 - Right of assembly

350. The right of peaceful assembly is implicitly regulated by article 10 of the Constitution of the Netherlands Antilles. This provides that the exercise of the right of assembly and gathering may be made subject to regulation and restriction by statute in the interests of public order, morals or health. It follows from this provision that the right of assembly is recognized in principle, although it is not stated expressly and may be restricted in the public interest.

351. The Act to which article 10 of the Constitution refers is the Act of the Netherlands Antilles of 22 June 1933 containing provisions concerning the exercise of the right of assembly (PB 1933 No. 54). This Act starts with a general prohibition on holding, leading, convening, organizing, attending and taking part in a public meeting for the purpose of common debate in the open air and on giving speeches in the open air, save where a permit has been given by the local police chief.

Article 22 - Freedom of association

352. It was stated in the first report that the policy of the authorities is in principle that everyone should have the right to join an association or trade union. This is also provided for in article 10 of the Constitution of the Netherlands Antilles. Reference should also be made to what was said above in relation to the right of assembly.

353. The Netherlands Antilles have numerous organizations and associations of which the various groups in society form part. Employers and employees also have their own organizations. It is thought that there are 20 trades unions.

354. It is worth pointing out with regard to trades unions that there is an important role for the authorities in promoting industrial peace. In the event of an industrial dispute, the conciliation officer on the relevant island can be called in under section 3 of the Employment Disputes Act (PB 1946 No. 119, as subsequently amended). This conciliation officer may order the employer(s) or employers' association involved in the dispute or the workers or the officials of their trades union to appear before him in order to provide information and thus to help bring about a peaceful settlement of the dispute.

355. As the Netherlands Antilles have a multi-party system, the country has several political parties. There are also several organizations that are active in the field of human rights, including a section of Amnesty International, the non-governmental Human Rights Committee and, on the various islands, women's organizations. A number of these women's organizations work closely with the authorities and act as advisory bodies in respect of government policy on the subject of women and development.

Article 23 - Protection of family

356. Reference should be made in this connection to the first report.

Article 24 - Protection of the child

357. This article not only bans discrimination but also provides that every child has the right to measures of protection on the part of his family, society and the State to which the child belongs.

358. Various amendments were made to the Civil Code (PB 1985 No. 117) as a result of the judgement of the Court of Justice of 14 December 1982, in order to abolish the distinction between legitimate and illegitimate descent. On the basis of the judgement of the European Court of Human Rights of 13 June 1979 (NJ 1980 No. 462) in the case of Paula and Alexandra Marckx v. Belgium and following the judgement of the Netherlands Supreme Court of 18 January 1980 (NJ 190 No. 463), the Court of Justice held that no distinction may be made for the purpose of the law of inheritance between an illegitimate and acknowledged child of a testator and his legitimate children. This ruling was based on articles 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and on article 1 of the First Protocol to the Convention. According to the judgements cited above, articles 8 and 14 of the European Convention prohibit discrimination between legitimate and illegitimate children in inheritance law.

359. The Joint Court of Justice held that the courts of the Netherlands Antilles too were bound by the judgement of the European Court of Human Rights. It went on to hold that there was also a trend in the Netherlands Antilles towards more equal treatment of legitimate and illegitimate children. In 1985 the legislature abolished the distinction between legitimate and illegitimate children in relation to inheritance law in the Civil Code. However, not every distinction has been abolished. Illegitimate children who have not been acknowledged were still not covered by the equal rights provision. This applied only to illegitimate children who had been acknowledged by the father. The reason why the distinction has not been abolished completely was the frequent difficulty of proving paternity, especially after the death of the testator.

360. Shortly after the introduction of this amendment, an illegitimate child who had not been acknowledged complained about the new distinction that had been introduced by the Civil Code. The plaintiff claimed the same rights in an inheritance as the legitimate children of the testator, partly because he had taken part in the same form of family life with his father as the legitimate children. The court at first instance granted the application on the ground of three circumstances, namely: the Marckx judgement gave no

ruling on the position of illegitimate children who had not been acknowledged; the plaintiff had claimed his share of the estate within a reasonable time after the death of the testator; it had been shown from the words and acts of the deceased that he was the father (GEA/NA 11 May 1987 and 23 November 1987).

361. However, the Joint Court of Justice ruled differently. The Court held (GHvJ, 22 November 1988; GHvJ 26 February 1991 judgement in 1991/44) that there were sufficient grounds for finding that the choice made by the legislature was not in conflict with the international treaties (European Convention and Covenant). This is not to say that the Joint Court regarded this choice as the best solution. But it considered that even if a judicial body believed that a more balanced arrangement was possible, this was not in itself a reason for setting aside the existing arrangement as being in conflict with the European Convention and the Covenant. Accordingly, the Joint Court merely checked formal compliance with the treaties. The issue involved in this inheritance case was of great importance in the Netherlands Antilles in view of the traditionally high percentage of illegitimate children in the country.

362. The legislation of the Netherlands Antilles also provides protection for the unborn child. Article 1 of the Civil Code stipulates that "the child with which a woman is pregnant shall, whenever this is in its interest, be treated as having already been born". Under paragraph 2 of this article, a birth should be registered with the Registry of Births, Deaths and Marriages within five days of the birth. Article 5 of the Civil Code provides that registers of births should be kept on all the islands of the Netherlands Antilles. Whereas a birth should in principle be registered by the father, if he is absent it may be done by the mother or by a person who was present at the child's birth.

363. The right to acquire a nationality as referred to in paragraph 3 of article 24 of the Covenant is regulated in the Kingdom of the Netherlands (and hence in the Netherlands Antilles too) by the Netherlands Nationality Act. The question of who acquires Netherlands nationality is therefore determined in the first instance by the principle of descent.

Article 25 - Right to take part in public affairs

364. In addition to what was said in the first report, it should be noted that in 1983 (PB 1983 No. 22) the Government revoked the discriminatory sections in the Act governing Substantive Public Service Law. The sections in question were section 5, subsection 3 (e), section 6, subsections 3 and 4, and sections 95 and 96, which provided that a female public servant who cohabited as a married woman or common law wife would be honourably discharged.

365. Previously it had also been provided that female public servants could hold only temporary posts in public service. Once the above-mentioned sections were revoked, married women and common law wives were officially allowed to take up permanent posts in public service.

366. In view of the above-mentioned developments, it should be noted that the reservation made by the Netherlands Antilles with regard to article 25 (c) of the Covenant was withdrawn by the Kingdom in December 1983.

Article 26 - Prohibition of discrimination

367. The public service tribunals in the Netherlands Antilles have held on various occasions since 1984 that the public service law of the Netherlands Antilles conflicts in some respects with article 26 of the Covenant. The regulations governing public service law (contained in the Act governing Substantive Public Service Law) contain several instances of discrimination:

(a) Married women are treated worse than married men;

(b) Unmarried men are treated worse than married men;

(c) Married women are treated worse than women who have been married;

(d) Single parents (men or women) who have remained unmarried are treated worse than single parents (men or women) who have been married;

(e) Illegitimate (natural) children are treated worse than legitimate or legitimated children;

(f) Children who have been acknowledged are treated worse than legitimate or legitimated children.

368. Below is a discussion of the most relevant cases in which a tribunal held that there was a conflict with the Covenant and the effect of the judgements on the rules which are at odds with the Covenant.

Inequality in salaries, child allowance and breadwinner's allowance

369. In the case of Shaw v. the Island Territory of St. Eustatius of 30 August 1984 (Tijdschrift voor Antilliaans recht (TAR) 1984, p. 231), the Antillean tribunal held for the first time that article 26 of the Covenant was self-executing. The tribunal also held that a pay scheme under which a married woman received around 20 per cent less than a married man for comparable work was discriminatory and, to this extent, not binding. According to the tribunal, it might be necessary to completely revise the pay structure in order to end the discrimination.

370. On appeal the Appeal Court for the Public Service upheld the above-mentioned judgement, while expanding and improving the grounds of the decision. The Appeal Court gave the following reasons:

(a) Discrimination exists only if no objective or reasonable justification can be given for a difference;

(b) It may be inferred from the revocation in 1982 of section 5, subsection 3 (e), and sections 95 and 96, of the Act governing Substantive Public Service Law in which a female public servant was accorded worse treatment than her male counterparts, that neither the Government nor parliament saw any socio-cultural, technical or legal objections to revocation of the sections;

(c) Accession to the Covenant indicated a desire to eliminate all forms of discrimination;

(d) The self-executing nature of the Covenant entitles individuals to plead the Covenant when fighting discrimination;

(e) The courts of the Netherlands Antilles may review national legislation by reference to the Covenant.

371. The Appeal Court left it to the Island Territory of St. Eustatius to abolish the inequality in the treatment of married male and married female public servants within a reasonable period. The Appeal Court did not itself correct the treatment as there were various ways in which equality could be achieved and it left the choice to the authorities (Appeal Court for Public Service Cases, 20 December 1984, TAR 1985 p. 140).

372. Three years later the tribunal itself corrected the inequality as it felt that the reasonable period allowed to the legislature in 1984 had long since elapsed. It also held that the Government of the Netherlands Antilles should bear the financial consequences of the termination of the financially advantageous discriminatory treatment. Although it was true that the financial consequences might be serious, it could not be right that a lack of financial means to comply with an obligation would serve to mitigate or even negate the obligation.

373. The tribunal also indicated that the proposed pay scheme which was to come into effect on 1 May 1988 did not in its view comply with the Covenant. The scheme in question provided that each married public servant would in the future receive the salary for unmarried persons plus a personal allowance amounting to the difference between the old and the new salary for married persons at the time of implementation. The allowance would continue to be paid until the person concerned left the public service. New personnel joining the public service and public servants marrying after the date on which the scheme came into effect would not receive the allowance.

374. As an *obiter dictum*, the tribunal expressed the following opinion with regard to the salary scheme which was to come into effect on 1 May 1998: "The allowance thus created once again discriminates, albeit in a different way, between married male and female public servants in comparable positions who joined the public service before 1 May 1988. In this way it takes away with one hand what it has given with the other". The tribunal held that the new scheme was not binding because of article 26 of the Covenant, which "required not so much equal remuneration as, more generally, equal treatment of men and women". This would cover an allowance of the kind referred to here (Appeal Court for Public Service Cases, 5 May 1988 (TAR 1988 p. 122)).

375. The Island Territory of St. Eustatius was unwilling to accept this judgement and appealed against it. The Appeal Court upheld the decision of the tribunal and improved the grounds of the decision. The Appeal Court based its decision on the fact that the authorities had always contended that the 20 per cent extra salary received by married men should be regarded as a form of breadwinner's allowance since they evidently assumed that it would in

principle be the husband who was the breadwinner in a family, although this is by no means always the case. There appears to be no good reason why the wife should not receive the allowance in cases where she is the breadwinner.

376. The Appeal Court also held that it had been established in the present case that the respondent Shaw and her husband constituted a household in which she should be designated as the breadwinner. Her husband did not work and received a pension. Moreover, the respondent had a child from her previous marriage who was maintained fully at her expense. The Appeal Court accordingly concluded that the respondent was entitled in this case to claim the salary that was paid to her male colleagues in comparable positions (judgement of 24 November 1988 of the Appeal Court for the Public Service).

377. Another important case that dealt with this problem was the civil case between Maria Weverink and the board of a Roman Catholic school. The board successfully applied for an indemnity from the Island Territory of Curaçao, which would take effect if Weverink's claim were allowed. Curaçao would then have to make available to the school board the requisite funds to cover the plaintiff's claim. Weverink, who had never been married, applied for an order against the school board that she was entitled to receive for her two minor, illegitimate children the child and breadwinner's allowance which was received by men in the employ of the school board who were or had been married. Weverink pleaded article 14 of the European Convention and article 26 of the Covenant.

378. She contended that sections 29, 30 and 31 of the Act governing Substantive Public Service Law, which were also applicable to her, conflicted with the relevant treaties. These sections discriminate between married and unmarried persons. Once again, the tribunal held that article 26 of the Covenant was self-executing and cited the Shaw case. The tribunal held in this connection that: "The present case involves a difference in pay between married and unmarried teachers. Since article 26 of the International Covenant also prohibits discrimination on the basis of status which includes marital status it must be contended that sections 29, 30 and 31 of the Act governing Substantive Public Service Law and the relevant provisions of the 1971 Pay Scheme for Teaching Staff in Curaçao in so far as this implemented the above-mentioned sections 29, 30 and 31, conflicted with the article of the Covenant and should therefore be revoked". It was no longer a question here of discrimination between married male and female employees but instead concerned discrimination between persons on the ground of married and unmarried persons.

379. The court held that Weverink was entitled in law to receive the same child and breadwinner's allowance for her minor children as applied to employees of the school board who were or had been married. The court also held in this case that article 26 of the Covenant can be invoked in disputes between individuals, in other words that it has effect in relation to third parties (Maria Weverink v. the Island Territory of Curaçao, court of first instance, 9 May 1988 (TAR 1988 p. 122)).

380. The same question was also dealt with in the case of Glenda Hansen v. the Executive Authority of Curaçao of 5 May 1989 before the Public Service Tribunal. As a public servant and as a divorcee who had not remarried, Hansen

received a salary for a married person plus child allowance. After she remarried, the Executive Authority directed that her salary should be cut by around 20 per cent and her child allowance cancelled. The tribunal held that it had already been decided on various occasions that the distinction in the present pay scheme between the remuneration of married female employees and married male employees was discriminatory, in any event if the married woman was also the breadwinner. As Hansen was the breadwinner she was held to be in the right. The tribunal once again cited the Shaw case.

381. The Appeal Court for the Public Service held in the case of Anselma v. the Governor of the Netherlands Antilles in 1989 that it is possible to find reasonable and objective grounds that justify a distinction in salary between an unmarried public servant who has no legal obligation to provide support and one who does have such an obligation. In this way it ratified several judgements of the public service tribunal on this matter. In these cases the tribunal had taken the view that a system of remuneration in which a difference in salary was linked to whether or not a support obligation existed could not be regarded as discriminatory.

382. It may be inferred from the cases discussed above that wherever the pay scheme results in unequal treatment of married female public servants and their married male colleagues this conflicts with article 26 of the Covenant.

383. There is also a conflict with the Covenant in cases where unmarried and divorced public servants are accorded unequal treatment although there are no reasonable and objective grounds for doing so.

384. Illegitimate children are discriminated against if the people who are responsible for their support are not entitled to a child allowance for them. This is contrary to the Covenant.

385. The judgements of the courts have ensured equality in the various categories of cases where a conflict was found to exist in law with the Covenant. However, the cases decided by the courts were of a one-off nature and meant only that the authorities were obliged to respect the rights of the persons concerned.

386. In the first half of 1990, however, the court of first instance passed judgement in a case in which the Island Territory of Curaçao sought an order from the court to end strikes within the educational system in Curaçao. Among their demands, the striking teachers were requiring that the authorities should end the inequality in the legal status of male and female teachers as regards pay.

387. On 10 May 1990 the court held as follows in this case:

> "Since 1984 the public service tribunals in the Netherlands Antilles and Aruba, the Appeal Court for the Public Service, the courts of first instance and the Joint Court of Justice of the Netherlands Antilles and Aruba have repeatedly - and in words that have become ever less susceptible of misunderstanding - held that the continued existence of this inequality of legal position, which has been defined as 'discriminatory', must be deemed to conflict with the obligations

> unconditionally entered into by the Netherlands in 1978 (the International Covenant). Similarly, the legislature has been urged by the courts with various degrees of firmness since 1984 to take the necessary measures. To date, however, no such measures have been taken. In the view of the court, the claims for the abolition of this unequal treatment before the law by the persons who are obliged to undergo this discrimination owing to the continuing failure to introduce the necessary legislation may, in view of this background, be treated as acquired rights and hence as an interest which cannot reasonably be surpassed. The court cannot therefore do otherwise than conclude that the present strikes are of an entirely lawful nature in so far as they relate to this aspect of the union's demands. It follows from the above that continuation of the strikes cannot be regarded as unlawful and that the application to this effect by the Island Territory should therefore be refused."

388. It was mainly due to this judgement that the Government decided on 7 June 1990 in a joint meeting with the Executive Authority of the Island Territory of Curaçao to take measures to comply with the relevant parts of the judgement of the court of first instance as given in the interim injunction proceedings on 10 March 1990 (AR No. KG 87/90). The measures then taken were as follows:

(a) With effect from 1 March 1990, the present remuneration for married people would be provisionally granted to:

- (i) Married female public servants;
- (ii) Unmarried male and female public servants who have a legal obligation to support their children;

(b) It was also decided to give a 5 per cent pay rise to unmarried public servants who have no legal support obligations. This had anyway been the intention, but it was now decided that this should be granted provisionally from 1 January 1990, in anticipation of the final settlement and entry into effect of the "phased" non-discriminatory pay scheme which had been presented to the Permanent Negotiation Council for the Public Service and the Advisory Council.

It was agreed that if it was administratively possible the increases referred to would be paid at the end of June 1990, which indeed proved to be the case.

389. The measures taken by the authorities as described above did not, however, put an end to the legal proceedings instituted against them in connection with the Covenant. On 12 April 1990 the public service tribunal gave judgement in a case in which a female public servant brought a claim against the authorities since she considered that as an unmarried mother she too was entitled to child allowance for her illegitimate children. The tribunal held as follows. Under section 29, subsection 1, of the Act governing Substantive Public Service Law, a married public servant is entitled to a child allowance for his legitimate child. This is elaborated in section 31 in such a way that a public servant whose marriage has been dissolved is also entitled to a child allowance for his or her legitimate

child (a woman only until she remarries). As regards the granting of a child allowance, however, there is no reasonable justification for making a distinction between legitimate and illegitimate children or between mothers who have been married but have not remarried and mothers who have never been married. An illegitimate child is no less of a burden on an unmarried mother than a legitimate child is on a divorced mother. These forms of discrimination on the basis of birth and (formerly) status are in breach of article 26 of the Covenant, which was approved by Kingdom Act. The provision in question is self-executing and as such forms part of the law of the Netherlands Antilles (public service tribunal No. 4/90 dated 12 April 1990).

390. This judgement was followed by a series of rulings in cases concerning child allowance. All of these cases were brought by female public servants and resulted in orders by the court that the authorities should pay the child allowance to the individual public servants concerned.

391. As a result of these judgements the authorities decided to award the child allowance to the following categories of public servant who have a statutory obligation to maintain their minor children:

(a) Married persons;

(b) Persons who are judicially separated;

(c) Divorced persons;

(d) Unmarried men who have an acknowledged child;

(e) Unmarried women whose child has not been acknowledged;

(f) Persons with stepchildren and/or foster children within the meaning of section 29, subsections 1 and 2, of the Act governing Substantive Public Service Law.

The date on which the payment of child allowance was to start coincided with the date on which payment of the breadwinner's allowance to the new categories of recipient would start, namely 1 March 1990. The authorities are endeavouring to revise the pay scheme in the course of 1992 in order to formalize the amendments that have already been made and to comply formally with the obligation resulting from article 26 of the Covenant.

392. However, this is not yet the end of the matter as there still remain the illegitimate, minor children of married men who, on account of their married status, have not been able to acknowledge these children. Under the law of the Netherlands Antilles, a married man cannot in law acknowledge an illegitimate child. This means that this category of illegitimate children has no right to child allowance through their parents and are therefore accorded worse treatment than legitimate, legitimated and acknowledged children. To date this problem has not been raised before the courts.

Article 27 - Minorities

393. Reference should be made in this connection to the first report.

III. ARUBA

A. Introduction

394. Aruba, the most western of the Leeward group of islands, was formerly part of the Netherlands Antilles. It is situated in the Caribbean, 15 minutes by air off the coast of Venezuela and 12 degrees north of the equator. The island is 19.6 miles long, 6 miles wide at its widest point and has an area of 70.9 square miles.

395. Aruba is one of the few islands in the Caribbean where traits of the native Indian population are still evident. The Aruban population today is a mixture of American Indian, European and African blood. The native language is Papiamento, while most Arubans speak English, Spanish and Netherlands in addition. Netherlands is the official language. However, plans have been drawn up to introduce Papiamento in addition to Netherlands as the language of instruction in schools.

396. Some 40 or more nationalities have contributed to creating a unique and peaceful society in Aruba. The main industry is tourism, while the oil refinery has recently resumed operations for the first time since its closure in 1985.

397. Aruba is a parliamentary democracy. The head of State is the Queen, represented by the Governor, who is appointed by the Queen on the recommendation of the Aruban Cabinet. The Cabinet is accountable to parliament which consists of one House. Members of parliament are chosen by general election every four years. The Governor and the Cabinet jointly form the Government of Aruba.

398. This report is submitted in pursuance of article 40 of the International Covenant on Civil and Political Rights. The Covenant became effective for the Kingdom of the Netherlands, including Aruba, on 11 March 1979.

399. In 1986, Aruba attained separate status within the Kingdom of the Netherlands, thus necessitating the submission of separate periodic reports on the implementation of the Covenant.

400. This report covers the period from 1986-1991 and follows as closely as possible the Guidelines laid down by the Committee (CCPR/C/20), as well as the Manual on Human Rights Reporting (United Nations Publication; Sales No. E.91.XIV.I.)

401. The present constitutional structure of the Kingdom of the Netherlands is as follows. Aruba is part of the Kingdom, which consists of three autonomous partners: the Netherlands, Netherlands Antilles and Aruba. Prior to January 1986, Aruba formed part of the Netherlands Antilles, but since then it has attained its current autonomous status (Status Aparte).

402. The Charter (Statuut), the highest constitutional instrument of the Kingdom, is a legal document *sui generis*, based upon its voluntary acceptance by the three countries. It consists of three essential parts. The first part defines the association between the three countries, which is federal by

nature. The fact that together the three countries form one sovereign entity implies that a number of matters need to be administered by the countries together, through the institutions of the Kingdom. These matters are called Kingdom affairs. They are enumerated in the Charter, and include the maintenance of independence, defence, foreign relations and proper administration. The second part deals with the relationship between countries as autonomous entities. Their partnership implies that the countries respect each other and render one another aid and assistance, material or otherwise and that they consult and coordinate in matters which are not Kingdom affairs but in which a reasonable degree of coordination is in the interests of the Kingdom as a whole. The third part of the Charter defines the autonomy of the countries which is the principle underlying the Charter.

403. Foreign affairs, including the authority to conclude treaties with other States and/or organizations, is, in accordance with article 3 of the Charter, a Kingdom affair, dealt with by the Council of Ministers of the Kingdom. This Council consists of the Netherlands Cabinet and a Minister Plenipotentiary each for Aruba and the Netherlands Antilles.

404. The Charter also lays down that each of the countries is responsible for ensuring basic human rights and freedoms, but it is the responsibility of the Kingdom as a whole to guarantee them (art. 43, sect. 1).

405. In the next section this report provides general information on Aruba, as well as the general legal framework within which the civil and political rights, as defined in the Covenant, are implemented. Section C provides more specific information relating to articles 1 to 27 inclusive of the Covenant. This information is intended to supplement and illustrate the contents of section B.

B. General information on Aruba

Demographic composition

406. The development of the Aruban population during the period 1986-1989 is as follows:

Table 1. Population, annual rate of population change and density of population

Year	Population	Annual rate of population change (%)	Area (km^2)	Density of population (inh./km^2)
1986	60 274	-1.65	193	312
1987	59 881	-0.65	193	310
1988	60 918	+1.73	193	316
1989	62 365	+2.38	193	323

Source: Statistical Yearbook 1989, Central Bureau of Statistics; July 1990.

407. On 9 November 1990, 6,247 foreign nationals were registered in Aruba (see table 2), representing about 9 per cent of the total population. A foreign national in this context means a person who does not have Netherlands nationality (to illustrate, nationals of Aruba, the Netherlands Antilles and the Netherlands have Netherlands nationality).

Table 2. Composition of the population of Aruba by nationality (November 1990)

Country of origin	Total (absolute)
Anguilla	1
Argentina	39
Australia	1
Austria	1
Barbados	4
Belgium	20
Brazil	23
Canada	51
Chile	19
China	243
Colombia	809
Costa Rica	20
Cuba	5
Cyprus	1
Denmark	3
Dominica	41
Dominican Republic	1 313
Ecuador	12
Egypt	1
El Salvador	4
Ethiopia	3
Finland	1
France	55
French Guyana	2
Germany	27
Ghana	1
Grenada	171
Guatemala	1
Guyana	42
Haiti	397
India	47
Indonesia	4
Israel	4
Italy	30
Iran (Islamic Rep. of)	1
Ireland	3
Japan	2
Jamaica	92
Jordan	1
Kenya	1
Korea (Republic of)	1
Kuwait	1
Lebanon	20
Madeira	3
Malacca	5
Mexico	12
Netherlands	62 644
New Zealand	3
Norway	5
Pakistan	1
Panama	13
Paraguay	3
Peru	34
Philippines	39
Portugal	185
South Africa	7
Singapore	3
Spain	20
St. Kitts	2
St. Lucia	1
St. Martin F.P.	1
St. Vincent	36
Suriname	134
Sweden	1
Switzerland	21
Syrian Arab Republic	1
Trinidad and Tobago	26
Tunisia	1
Turkey	1
Uruguay	2
United Kingdom	524
USA	817
Venezuela	815
ex-Yugoslavia	3
No nationality	9
Total	68 891

Source: Registry Office, 1991.

Table 3. Population by sex

Year	Total	Males	Females	Females per 1,000 males
1986	60 274	29 158	31 116	1 067
1987	59 881	28 978	30 903	1 066
1988	60 918	29 474	31 444	1 067
1989	62 365	30 183	32 182	1 066

Source: Statistical Yearbook, 1989, C.B.S.; July 1990.

408. The increase in the number of inhabitants of Aruba over the period 1986-1990 was mainly the result of considerable economic expansion. Due to a shortage of local labour, many foreign nationals were and still are recruited.

409. Although no record is kept of the number of people of a certain nationality or ethnic origin working in each economic sector, certain trends are discernible. Most foreign nationals work in the construction, tourist and domestic sectors. Work in the construction sector is mainly performed by nationals of Venezuela, Colombia, the Dominican Republic and Turkey, the latter being principally employed in the refinery. With regard to the tourist sector, a distinction needs to be made between skilled and unskilled personnel. Unskilled work is mainly performed by nationals of Venezuela, Colombia, Peru, Chile and the Philippines, while most skilled work is performed by people from Aruba itself, the Netherlands and the United States. Work in the domestic sector is mainly performed by nationals of Haiti, Jamaica, Venezuela and Colombia.

410. In Aruba, information on race is not recorded. For this reason, no indication can be given of the number of coloured and/or white people belonging to a certain social class.

411. Questions relating to origin and race were included in the October 1991 census, the first census to be held since 1981. The information thus obtained will enable the Government to act on current developments and to take any necessary measures in the interests of the groups themselves. The results of the census, as appropriate, will be further dealt with in the next report.

412. A considerable number of the foreign employees are not entered in the Population Register as they have temporary work and residence permits. This applies to the approximately 1,440 Turkish nationals employed at the refinery, in addition to considerable numbers of Italian, Venezuelan, Philippine and Jamaican nationals employed in the construction and tourist sectors.

Education

413. Aruba has 52 primary schools and 21 secondary schools attended by 8,103 and 5,172 pupils respectively. The children of people living temporarily in Aruba attend the International School, which provides education along American

lines. A total of 91 pupils were enrolled at the school in 1987. A limited number of higher education courses are available in Aruba: 166 students are enrolled at the Business School, while 29 students attend the Teacher Training College. The Catering School and prep school, which are both based on American models, are attended by 102 and 234 students respectively. In September 1988, the Faculty of Law was established as the first faculty of the University of Aruba. Students wishing to study other subjects generally do so in the Netherlands or the United States.

414. Aruba has always been a multicultural and multiracial society. Special attention to the problems this might entail has therefore never been considered a necessary part of the school curriculum and the Aruban Government has not adopted any specific policy on the matter. However, during social studies lessons attention is paid to the issue of discrimination as contained in the terms of this Covenant.

415. Since approximately 1985, a large number of immigrants have entered Aruba, in some cases with their families. Their children attend local schools, which provide the same curriculum as that provided in schools in the Netherlands. Parents are free to choose the school they wish their children to attend. The schools themselves do not experience any problems with the integration of immigrant children or of the different racial groups. However, the fact that Netherlands is the official language in schools has given rise to problems for both the children individually and the school system as a whole. In 1989, the Aruban Ministry of Public Order and Security organized Netherlands language courses for young people, which were very well attended. In addition, individual schools have recently organized Netherlands language courses for those immigrant children who do not speak Netherlands.

Civil and political rights in Aruban legislation

416. The main catalogue of basic human rights (including civil and political rights) in Aruba is the Constitution (Staatsregeling). The most important basic human rights are laid down in chapter 1 and in a number of other chapters.

417. In addition, when Aruba attained its current Status Aparte in 1986, the relation between the Netherlands Antilles and Aruba was laid down in the Cooperation Regulations (Samenwerkingsregeling). Article 3 of the Regulations directs the two countries to incorporate civil and political rights into their legislation, which needs to be consistent with the provisions of the European Convention on Human Rights.

418. Although, for example, torture is not named as such in Aruban legislation, the Aruban Code of Criminal Procedure contains provisions relating to this serious offence as well as to other offences such as verbal abuse and incitement to the publication of discriminatory matter.

419. A number of other regulations relevant to civil and political rights are discussed in the second part of this report.

Obligations arising from other international agreements

420. Aruba is party to the following agreements relating to human rights, in addition to the International Covenant.

(a) The International Convention on the Elimination of All Forms of Racial Discrimination;

(b) The European Convention for the Protection of Human Rights and Fundamental Freedoms;

(c) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(d) The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(e) The European Social Charter;

(f) The International Covenant on Economic, Social and Cultural Rights.

Additional information on Aruba

421. The following tables provide a more complete picture of Aruba. They contain statistical information on, for example, population by nationality and sex, age distribution, type and size of households, living accommodation and religion, in addition to economic information such as net national income and per capita income.

422. In some cases discrepancies exist between figures provided by the Registry Office and those provided by the Central Bureau of Statistics (CBS). The Registry Office figures were higher than those of the CBS during the last two censuses. According to the CBS this is due to the failure of the Registry Office to record the correct number of outgoing migrants.

423. In some cases the figures are those available from the 1981 census when Aruba was still part of the Netherlands Antilles. The next report will deal with the figures as appropriate obtained in the October 1991 census.

Population

Table 4. Birth and death rates (%)

Year	Population	Birth rate	Death rate
1986	60 274	16.8	377
1987	59 881	16.6	370
1988	60 918	15.6	335
1989	62 365	18.3	372

Source: Statistical Yearbook 1989, CBS; July 1990.

Table 5. Age distribution, 1 February 1981

Age	Total	Males	Females
0-4	5 125	2 629	2 496
5-9	5 046	2 566	2 480
10-14	5 444	2 784	2 660
15-19	6 621	3 367	3 254
20-24	6 273	3 204	3 069
25-29	5 584	2 642	2 942
30-34	4 880	2 310	2 570
35-39	4 077	1 902	2 175
40-44	3 865	1 791	2 074
45-49	3 321	1 547	1 774
50-54	2 487	1 179	1 308
55-59	1 845	915	930
60-64	1 751	773	978
65 and older	3 993	1 731	2 262
Total	60 312	29 340	30 972

Source: Population Census 1981.

Table 6. Average age of the population, 31 December

	1986	1987	1988	1989
Total	32.0	32.4	32.7	32.7
Males	31.3	31.5	31.8	32.0
Females	32.8	33.2	33.5	33.3

Source: Population Census 1981 and Population Register.

Table 7. Life expectancy of the population by age and sex, 1981

Age at birth	Male	Female
at birth	71.64	76.76
1	71.28	77.00
5	67.50	73.11
10	62.58	68.34
15	57.76	63.38
20	53.15	58.42
25	48.68	53.57
30	44.00	48.89
35	39.36	44.01
40	34.75	39.17
45	30.51	34.49
50	26.46	29.89
55	22.50	25.24
60	18.86	20.98
65	15.18	16.96
70	12.33	13.38
75	9.28	10.13
80	6.66	7.36
85	4.37	4.55

Source: M. Koningstein, 1985.

Table 8. Essential statistics

	1986	1987	1988	1989
Live births	1 014	992	949	1 141
Deaths	317	370	335	372
Natural increase	637	622	614	769
Domiciliation	1 447	1 587	2 211	2 743
Departures	2 865	2 603	1 788	2 065
Net migration	-1 418	-1 016	423	678
Total increase	-781	-394	1 037	1 447

Source: Registry Office.

Table 9. Households by type and size, 1 February 1981

	Absolute	Relative
One-family households		
of 2 persons	2 304	13.7
of 3 persons	2 641	15.7
of 4 persons	3 046	18.1
of 5 persons	2 055	12.2
of 6 persons	1 258	7.5
of 7 persons	706	4.2
of 8 persons	462	2.7
of 9 persons	266	1.6
of 10 persons or more	430	2.6
Total	13 168	78.1
Multi-family households		
of 4 persons	127	0.8
of 5 persons	225	1.3
of 6 persons	262	1.6
of 7 persons	235	1.4
of 8 persons	221	1.3
of 9 persons	140	0.8
of 10 persons or more	319	1.9
Total	1 529	9.1
Non-family households		
of 2 persons	279	1.7
of 3 persons	87	0.5
of 4 persons	19	0.1
of 5 persons or more	8	0.0
Total	393	2.3
Persons living alone	1 761	2.3
Grand total	16 851	100.0

Source: Population Census, 1981.

Housing

Table 10. Living accommodation by number of rooms, 1 February 1981

Dwellings	Absolute	Percentage
1 room	696	4.7
2 rooms	1 408	9.4
3 rooms	2 626	17.6
4 rooms	3 926	26.3
5 rooms	3 201	21.4
6 rooms	1 789	12.0
7 rooms	810	5.4
8 rooms	266	1.8
9 rooms	95	0.6
10 rooms or more	107	0.7
Total	14 924	100.0

Source: Housing Census, 1981.

Table 11. Dwellings by basic facilities and communications, 1 February 1981 (%)

Availability of:	
A. Water supply:	
Water network	98.7
Cistern and/or ground water	0.4
Combination of 1 and 2	0.4
Other e.g. watertrucks	0.5
B. Electricity supply:	
Electricity network	97.0
Own generator	1.5
Combination of 1 and 2	0.2
C. Bath and/or toilet	
Bath with toilet	96.6
Bath without toilet	1.0
Toilet without bath	0.7
D. Radio	88.2
E. Television	87.7
F. Newspaper subscription	47.5
G. Telephone connection	36.0

Source: Housing census 1981.

Religion and politics

Table 12. Religion (%)

	1972	1981
Roman Catholic	88.2	88.5
Methodist	3.8	2.4
Anglican	1.1	0.9
Adventist	0.4	0.6
Protestant	3.8	2.8
Evangelist	0.0	0.6
Jehovah's Witness	0.0	1.1
Muslim	0.0	0.0
Jewish	0.1	0.2
Other	1.4	1.3
No religion	1.2	1.6
Total	100.0	100.0

Source: Population Censuses 1972 and 1981.

Table 13. Results of elections to Island Council (C) and parliament (P)

Year	Number of persons with voting rights	Number of persons without voting rights	Valid votes	Invalid votes	Abstentions
1983	42 716 (C)	36 360	35 898	462	6 356
1985	43 393 (C)	37 033	36 642	391	6 360
1989	43 054 (P)	36 465	36 032	433	6 589

Source: Registry Office.

Note: until 1986, when Aruba still formed part of the Netherlands Antilles, elections were held for both the Island Council and the (Antillean) parliament. After that date, parliamentary elections only were held in Aruba.

Labour

424. Bear in mind that labour figures especially have changed considerably since the 1981 Census. As a result of economic expansion, more females have entered the labour market. The tables were nevertheless included to provide an impression.

Table 14. Working population by age and sex, 1981

Age	Total	Male	Female
14-19	1 331	792	539
20-24	4 160	2 324	1 836
25-29	4 107	2 357	1 750
30-34	3 384	2 076	1 308
35-39	2 727	1 752	975
40-44	2 418	1 653	765
45-49	1 976	1 416	560
50-54	1 392	1 056	336
55-59	904	739	165
60-64	534	423	120
65+	635	523	112
Total	23 577	15 111	8 466

Source: Population Census 1981.

National economy

Table 15. Gross National Product (GNP)

	1986	1987	1988
Nominal GNP (Af. million)	808	917	1 108
Annual % growth rate	-	13	21
Real GNP (Af. million)	808	886	1 034
Annual % growth rate	-	10	17

Source: DEACI (estimates).

Table 16. Unemployment rate

	1981	1984	1986	1987	1988
Unemployment rate	9.4	19.4	19.7	14.6	6.8

Source: DEACI (estimates).

425. International trade has always played a significant role in Aruba's economy. Having few natural resources, Aruba has to import many commodities for domestic use. In order to meet its import costs, Aruba further developed international trade and transport facilities, and adopted the position of mediator. An open economy policy is of vital importance for the Aruban economy.

Table 17. Activity rate per sector in percentages

Sector	1981	1984	1986*	1988*
Agriculture and fishing	0.17	0.07	0.33	0.86
Oil and industry	8.58	6.98	4.41	3.28
Construction	7.98	9.51	5.33	8.40
Public utilities	2.04	1.82	1.64	1.59
Tourism and trade	32.78	35.14	55.30	55.94
Banking and insurance	4.46	6.93	6.71	6.19
Transport and communications	5.43	6.89	3.70	4.45
Public sector and other services	38.56	32.66	22.58	19.29
	100.00	100.00	100.00	100.00

* only partly available.

Source: "Aruba Investment Guide".

Social affairs

Table 18. Minimum wages (monthly), at 1 January

	1986	1987	1988	1989	1989	
					weekly	hourly
Industry	925.40	925.40	925.40	925.40	213.85	-
Service	686.90	686.90	686.90	686.90	158.70	- a/
Trade	594.58	594.58				
Domestic personnel	283.85	283.85	341.65	341.65	-	3.84

Source: Ministry of Employment and Social Affairs.

a/ If working less than 22 hours weekly, the hourly wage rate must be considered.

C. Implementation of specific provisions of the Covenant

426. Section C of this report contains information relating to articles 1 to 27 inclusive of the Covenant. An outline will be given of the most relevant legislative instruments available to Aruba in fulfilling the terms of the Covenant. If available, case law and other practical information will be used to illustrate its implementation. The information presented should be regarded as supplementary to that contained in the previous sections.

Article 1 - Right to self-determination

427. As stated in the second report, Aruba acquired the status of separate country within the Kingdom on 1 January 1986. During the 1983 Round Table Conference, where agreement on this separate status was reached, the Netherlands urged that it be granted for a period of 10 years, after which Aruba should gain independence. Article 62, paragraph one, of the Charter

for the Kingdom of the Netherlands puts it as follows: "1. With regard to Aruba, the constitutional order laid down in the Charter shall end as of 1 January 1996."

428. Since these words were written, the situation has changed in such a way in both the Netherlands and Aruba that neither country is of the opinion that the provision relating to independence need necessarily be retained in the Charter. On 13 July 1990, the Minister for Netherlands-Antillean and Aruban Affairs and the Aruban Prime Minister agreed that article 62 would be rescinded and that both Caribbean countries (the Netherlands Antilles and Aruba) would retain the right to secede from the Kingdom. Such a step could only be effected by means of a Country Ordinance, passed by a two-thirds majority, and after the results of a national referendum had demonstrated that a majority of voters were in favour of independence. The results of the debate between the three countries of the Kingdom on an amendment to the Charter to this effect will be dealt with in the next periodic report.

429. Aruba does not have any specific regulations relating to the implementation of the provisions of the second paragraph of article 1 of the Covenant. The natural wealth and resources of Aruba are not yet being fully exploited. Seismographic research has shown that the ocean bed around Aruba might contain oil. As it has not yet yielded results, drilling has been discontinued. In the past, there was a certain degree of gold and phosphate mining. Aruba relies totally on costly desalinated sea water for its drinking water.

430. It may be noted that endeavours to achieve the right to self-determination as laid down in the third paragraph can only be effected within the Kingdom as a whole. Aruba therefore endorses the remarks made on this subject in the second report.

Article 2 - Non-discrimination

431. Recognition of equality is worded as follows in article 1.1 of the Constitution of Aruba:

> "All people in Aruba are equal. Discrimination on the grounds of religion, belief, political opinion, race, sex, colour, language, nationality, social origin, wealth, birth, membership of a national minority or on any other grounds whatsoever is prohibited".

432. The remarks made by the Netherlands Government in the second report on the scope of this provision of the Constitution, principally as a result of the addition "on any other grounds whatsoever", apply equally to the Constitution of Aruba, as the said article is largely similar to the first article of the Netherlands Constitution.

433. Since taking office in February 1989, the Government has implemented this article by, for example, abolishing the distinction drawn between married and unmarried status in determining the salaries of public servants. The measure, which was introduced on 1 January 1990 by means of various public servants' pay decrees, was implemented after a number of court judgements had laid down that the distinction was unjust.

434. In addition, the distinction drawn between legitimate and illegitimate children in the allocation of child allowances was abolished as of 1 January 1991.

435. Finally, it is worth mentioning that an agreement concluded with the trade unions has led to the acquisition of public servant status and membership of the Aruba General Pension Fund for manual workers and cleaners. This alteration in status, introduced as of 1 August 1990, also led to the inclusion of the employees involved in the public servant salary scales and a consequent increase in their income.

436. The Aruban Government must acknowledge that distinctions based on a number of the grounds mentioned in this article still exist. Yet, it is of the opinion that exceptional factors justify a distinction in certain cases. The size of the country plays an important role. In order to ensure that the living conditions on a small island such as Aruba are congenial to those entitled to enjoy them, it is not only desirable, but also essential that a number of matters are subject to certain restrictions. An example is policy on residence on Aruba: only those Netherlands nationals who were born on Aruba are entitled to a permit on the basis of the Country Ordinance on passenger transport, the Ordinance on the establishment of companies or the Country Ordinance on electricity franchises. In this connection too, the regulations relating to the admittance and deportation of aliens, which will be discussed in more detail under article 13, may be mentioned. In those cases in which distinctions cannot be justified, regulations and related policy will be amended in such a way as to remove them.

437. An example of an existing statutory provision which is contrary to the terms of this article of the Constitution is article 1, paragraph 1 d, of the Country Ordinance on admittance and deportation, in which reference is made to "members born outside Aruba of the legitimate family of a male Netherlands national". The provision entitles the legitimate family of an Aruban male only, and thus not of an Aruban female, to be admitted to Aruba. A new Country Ordinance on admittance and deportation is currently under preparation. The new Country Ordinance represents a complete revision of the system of admittance, abolishing the discriminatory provision.

438. The following comments may be made with regard to the third paragraph. Many statutory regulations provide for the right of appeal against certain decisions of administrative bodies. The citizen may, for example, appeal against decisions made on the basis of current tax legislation to the Fiscal Appeals Council. Similarly, public servants may appeal to the public servants' tribunal. These procedures are, in the opinion of the Aruban Government, consistent with this article and article 14, paragraph 1, of the Covenant, as the courts involved are independent and impartial. Appeal to the Governor or a minister is a different case; these act in a great number of cases as administrative appeal bodies but do not act as impartial and independent courts. Partly as a result of the judgement of the European Court of Human Rights of 23 October 1985 (Benthem), whereby appeal to the Netherlands Crown, in Aruba represented by the Governor, may not be regarded as independent and impartial justice, an administrative procedure has been prepared. To this end, a draft Country Ordinance is pending whereby all exceptional appeal and objection procedures are to be replaced by one

administrative procedure, i.e. appeal to a court of first instance. This appeal may be instituted against any decision made by an administrative body which has legal consequences provided a compulsory objection procedure has been completed. The Country Ordinance on administrative procedure will be further dealt with in the next report.

439. In those cases which are not included in the provisions of the Country Ordinance, the individual may institute civil proceedings on the grounds that the Government has committed a tort (art. 1382 of the Civil Code of Aruba). Such proceedings are conducted before the court of first instance, with scope for appeal to the Joint Court of Justice of the Netherlands Antilles and Aruba and of appeal in cassation to the Supreme Court of the Netherlands.

440. General comment 15 (27) requests information on the position of aliens in the member State concerned. Although further details will be provided under article 13, admittance and deportation procedures in Aruba will be outlined below.

441. The Country Ordinance on admittance and deportation, the Admittance decree and various ministerial orders together represent a restrictive policy on admittance. Aliens wishing to enter the Aruban employment market need to meet a number of requirements, which include the submission of two passport photographs, a character reference drawn up within the previous two months, a medical certificate issued in the country of origin within the previous month stating that the individual involved does not suffer from an infectious disease or mental illness, certificates and references relevant to the job in question, a letter of guarantee from the employer and the contract of employment concluded with the employee in accordance with Aruban law.

442. Aliens are admitted in the following cases only: if they represent no threat to the public good and the maintenance of public order, if positions cannot be filled from manpower supply on the local labour market and on humanitarian grounds.

443. With a view to maintaining checks on the number of nationals of the Dominican Republic and Haiti living in Aruba, a maximum admittance quota is currently applicable.

444. Aliens must leave Aruba within three weeks of the expiry of their employment contract or residence permit.

445. The following legal remedies are available to aliens wishing to appeal against deportation: interlocutory injunction proceedings or appeal to the Minister of Justice or Governor. Only those people whose residence permit has been rescinded are permitted to remain in Aruba to await the outcome of the proceedings. The court may however issue an interlocutory injunction allowing an alien who has received a deportation order for another reason to remain in the country. Case law shows that this occurs in most cases.

446. As stated above, the Country Ordinance on admittance and deportation is currently undergoing thorough revision.

Article 3 - Equal rights of men and women

447. As stated under article 2, article I.1 of the Constitution of Aruba has become an important instrument in the removal of discrimination on the grounds of sex and marital status. The remarks made under article 2 apply equally to this article.

448. With regard to Aruban women, it may be noted that Aruban society is a highly matriarchal one so that Aruban women enjoy a relatively strong social position.

449. As a result of the growth of the Aruban economy, it became necessary to attract Aruban women into employment outside the home. Although recent figures were not available at the time this report was drawn up, it may safely be said that women account for a considerable proportion of the Aruban working population.

450. With regard to the recognition and acquisition of Netherlands Nationality, the Netherlands Nationality Act is based on the *ius sanguinis* principle: the nationality of the parents determines whether a child may acquire Netherlands nationality. As men and women have equal rights, the Act lays down that the nationality of the father or of the mother determines *ipso jure* acquisition of Netherlands nationality (sect. 3). Previous to this, the nationality of the father was decisive.

451. After being married to a Netherlands national for a period of three years, the spouse may submit an application for Netherlands nationality (art. 8, para. 2). It is, therefore, not acquired automatically. The law does not draw distinctions between men and women in this matter.

Article 4 - Restrictions on derogations from obligations under the Covenant

452. The provision that in a public emergency a State party may take certain statutory measures which might, in some cases, lead to restrictions on the exercise of certain fundamental rights, has had its repercussions on the Aruban Constitution. Article V.29 of the Aruban Constitution authorizes the drawing up, by Country Ordinance, of further measures to be taken in a state of emergency. The second paragraph does not exclude the limitation of certain fundamental rights in such cases. Parliament is responsible for proclaiming and ending the state of emergency, (art. V.29, para. 3).

453. A Country Ordinance has already been drawn up to implement article V.29, i.e. the Disaster Ordinance (AB 1989 No. 51). This ordinance contains provisions in the administrative field which become operative as soon as it has been established that a disaster, in its statutory sense, has occurred. As guidelines relating to implementation, such as the legal status of those who have been called in to assist in combating the disaster and the compensation to be paid for the use of confiscated goods, have not yet been drawn up, the Country Ordinance has not yet become operative. No further specific measures to be taken at national level in states of emergency are in existence.

454. A state of emergency was not declared at any time in Aruba in the period between 1986-1991. This was also the case in the period before 1986.

Article 5 - Prohibition on narrow interpretation of the Covenant

455. Fundamental rights are laid down in the 22 articles of section 1 of the Aruban Constitution. A number of fundamental rights are also laid down in other passages of the Constitution (for example, art. V.22 on sufficient employment; art. V.23, second paragraph, on the provision of sufficient living accommodation).

456. The catalogue of such rights is extensive and is based on international conventions, such as the Universal Declaration of Human Rights, the European Social Charter, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in addition to the Constitution of the Netherlands and generally acknowledged principles of fundamental rights.

457. Furthermore, the articles of the Netherlands Constitution which stipulate the order of precedence of international conventions and national guidelines also apply to the constitutional order of Aruba. The provisions of these articles solve the problems which arise should the application of provisions of a convention or decision of a human rights organization which are binding on each individual conflict with the statutory provisions of the country concerned. In such cases, the provisions of the convention or of the human rights organization take precedence over national statutory provisions. Of crucial relevance are the words "binding on each individual". Such provisions are directed at individuals themselves, without regard for governments.

458. The Aruban Government is aware that the terms of the Covenant may be open to a variety of interpretations. A wide interpretation would regard it as applying not only to the legal relationship between an individual and the State party (the "vertical" effects), but also to the legal relationship between individuals themselves (the "horizontal" effects). A second, narrower interpretation would not recognize scope for individuals to enforce their civil rights as they relate to other individuals, but would only recognize the vertical effects of the terms of the Covenant.

459. The petition procedure laid down in the Covenant and the Optional Protocol is not intended as a means by which individuals may enforce their rights in respect of other individuals; the procedure is designed as a means of seeking redress from a State party which has violated a provision of the Covenant. This does not, however, alter the fact that the self-executing rights and freedoms laid down in the Covenant may indeed also be applied directly by the domestic courts. Much will depend in this case on the question if and to what extent the rights and freedoms contained in the Covenant have also been expressed in domestic regulations.

460. In so far as such rights and freedoms have been expressed in the Constitution, which is the case with regard to a considerable number of the provisions of the Covenant in the Constitution of Aruba, the question of whether they are self-executing remains. Of crucial importance is whether

domestic regulations may be examined in the light of the rights and freedoms laid down in the Constitution. Article I.22 of the Constitution of Aruba creates scope for such an examination, i.e. "Statutory provisions do not apply in those cases in which they are at odds with the provisions of this Section" (section I: fundamental rights). Should no similar scope for examination exist, violations of civil rights could only be dealt with by means of a domestic procedure, if such rights are laid down in legislation. This applies even if civil rights are not laid down in the Constitution.

461. The question as to the interpretation of the Covenant cannot be answered unequivocally with regard to Aruba. No provisions relating to horizontal effects are laid down in the Covenant itself, but obstacles are not put in the way of any State party wishing to recognize them, where appropriate, within its own legal system. Much will depend on specific circumstances and continually changing attitudes towards the question involved.

462. The Aruban Government is therefore of the opinion that no clear and unequivocal solution can be provided to the question of the horizontal effects of the provisions of the Covenant as a whole or of the individual rights and freedoms contained therein. However, should a statement in the matter be desired, the Aruban Government would emphasize that it endorses a wide interpretation.

Article 6 - Right to life

463. Article 6 determines the right to life, which is, as described in various of the Committee's General Comments, the supreme right, deprivation or limitation of which is prohibited under any circumstance whatsoever.

464. Article I.4 of the Constitution of Aruba prohibits the death penalty. The prohibition is general and knows no distinctions, such as, for example, between adults and young persons. Even before the prohibition was laid down in the Constitution, the death penalty had never been imposed in Aruba. On 1 January 1991, the Military Penal Code Amendment Act implementing reform of military law and the abolition of the death penalty (Act of 14 June 1990, Bulletin of Acts, Orders and Decrees 1990, 368; AB 1990 No. 61) was introduced, under the terms of which the death penalty was abolished in military criminal law.

465. The right to life is closely related to quality of life. For the sake of brevity, we would refer the reader to the data on birth and death rates, life expectancy and other elements relating to population growth included in tables 4, 7 and 8 of section B of this report.

466. The punishment to which individuals who have unlawfully taken the life of another individual are liable may be found in articles 300 to 312 and in a number of the articles of chapter XX (assault) of the Aruban Criminal Code.

467. Aruba does not have "victim support" facilities for the victims of violent crime. However, the general tort article of the Civil Code provides scope for civil proceedings in which compensation may be claimed for the material and non-material damage incurred in such cases.

468. The waging of war is inconsistent with the enjoyment of the right to life, as stated in General Comment 14 (23). Under the terms of article 3, paragraph 1a, of the Charter of the Kingdom of the Netherlands, the maintenance of the independence and the protection of the Kingdom are Kingdom affairs towards the costs of which Aruba and the Netherlands Antilles contribute (arts. 30 and 35 of the Charter). The role of Aruba and the Netherlands Antilles in these matters is further laid down in The Defence Act (Netherlands Antilles and Aruba) (Bulletin of Acts, Orders and Decrees 1985, 658; AB 1986 No. 19; AB 1986 No. 11).

469. The Kingdom may only declare war with the permission of the States General (art. 96, para. 1, of the Netherlands Constitution).

470. The use of firearms by the authorities may unfortunately sometimes lead to loss of life. This did not occur at all on Aruba in the period 1986-1991. See further under article 7 for comments on the use of firearms by the police.

Article 7 - Prohibition of torture

471. The prohibition of torture, as laid down in the provisions of article 7 of the Covenant, may also be found in the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Aruba has been a party since 20 January 1989. The Aruban Criminal Code and Code of Criminal Procedure do not contain provisions directly prohibiting the use of torture. However, in combination with other acts and decrees, the Codes contain provisions providing the individual with a considerable degree of protection against the possible incidence of behaviour which could be regarded as torture. In addition, scope for redress is created for those persons who are of the opinion that they have been the victims of torture.

472. The prohibition of mistreatment and torture is inherent to article I.3 of the Constitution of Aruba which lays down the principle of the inviolability of the human body. Article 381 of the Aruban Criminal Code declares as punishable "the official who abuses his or her authority to force an individual to perform an act, to refrain from or to concur with the performance of an act".

473. In view of the fact that, in practice, the police force will mainly be concerned with complaints relating to torture, much attention is paid to human rights during police training. Article 12 of the Country Ordinance on police training (AB 1986 No. 25) lays down that, on completion of the initial training, a trainee should possess:

> "a. sufficient knowledge and understanding of law to be aware of the complexity of its applications;
>
> "b. sufficient knowledge and understanding of the general responsibilities of the police and of the provisions relating to the legality of police activities, particularly as they affect the competences and instructions relating to the use of force in his or her position as an investigating officer;
>
> "...

> "e. sufficient knowledge and understanding of the term 'offence', the most essential general principles of criminal justice and the most relevant punishable offences (...);
>
> "...
>
> "h. sufficient knowledge and understanding of human rights in general and the fundamental rights contained in the Constitution of Aruba in particular, in addition to the willingness to protect these rights."

474. A police officer is authorized, in the just exercise of his office or position and under certain strict conditions, to use force against persons and property. Taking into consideration the possible risks attached, force may only be used when justified by the objective and when no other means are available to achieve the said objective (art. 3, Country Ordinance on the police; AB 1988 No. 18). Wherever possible, the use of force must be preceded by a warning (art. 2). A separate Country Decree (Country Decree on the use of force and police security searches; AB 1988 No. 6) contains, inter alia, the following guidelines:

> "Article 3.
>
> "1. Police officers are authorized to use force in the performance of their duties under the following conditions only:
>
> "a. the objective cannot be achieved by any other means and
>
> "b. the objective is of sufficient importance to justify the use of force and
>
> "c. the disadvantages of not achieving the objective outweigh the risks attached to the use of force, including risks to third parties."

475. In addition, reason and moderation must be exercised in the use of force, while the risks to those involved and to third parties must be limited as far as possible (art. 4, paras. 1 and 2 of the above Country Ordinance). Articles 7 (non-automatic firearms) and 9 (automatic firearms) contain provisions relating specifically to the use of firearms.

476. A torture victim may apply for compensation in the civil court on the grounds of tort article No. 1382 of the Civil Code. No specific victim support facilities are available, as stated above.

477. The Country Decree on complaints against the police (AB 1988 No. 71) instituted a complaints committee to which those persons objecting to specific instances of police activity may appeal. This committee, which consists of "eminent persons of good behaviour of whom it may be expected that they are able to provide a balanced judgement of the relationship between the police and the public and have knowledge of the sensibilities of the Aruban community in this respect" (art. 5), deals with complaints of "each individual who is of the opinion that his or her interests have suffered direct damage from

the actions or words of a police officer, performed or spoken on a specific occasion while he or she was performing his or her duties" (art. 2).

478. The disappearance of persons is often, regrettably, closely connected with the exercise of torture. In order to prevent such abuses, Aruban legislation contains certain safeguards, such as provisions included in the Prisons Ordinance and the Country Decree on Prisons which, for example, ensure that prisoners are only detained in those places specifically designated for that purpose (i.e. prison or remand centre: arts. 1 to 3 inclusive of the Prisons Ordinance) that the prisoners are properly registered (arts. 21 and 22 of the Country Decree) and that prisoners may receive visitors (art. 47 of the Country Decree).

479. Detainees may address complaints on matters relating to the institution in which they are serving their sentences to a Supervisory Committee (art. 6, para. 2 and art. 4 of the Country Decree on the prison and remand centre Supervisory Committee). This Country Decree, which dates from 1962, does not correspond to the present situation, which has altered considerably since the decree was first implemented.

480. Individuals in Aruba are not subject to scientific or medical experimentation as science has not reached such a level as to make it possible. Medical care in Aruba consists of the provision of basic necessities and care. Scientific research is out of the question, due to a lack of both funds and available personnel.

Article 8 - Prohibition of slavery

481. In view of the worldwide abolition of slavery, the prohibition as contained in article 8 relates to slavery in its modern forms: the trade in women or children, prostitution and forced labour. The prohibition of slavery is inherent to article I.5 of the Constitution of Aruba which lays down the right to liberty and security of person, while the Kingdom (including Aruba) is party to the Slavery Convention (Geneva, 25 September 1926) and the Protocol amending the Slavery Convention (New York, 7 December 1953). Moreover, according to article 2 of the Aruban Civil Code, "... Slavery and personal servitude of any nature whatsoever and known by any name whatsoever are prohibited in Aruba."

482. Although prostitution occurs in Aruba, as it does in most other countries in the world, trade in women may be regarded as non-existent. The persons in question come to Aruba of their own free will and are often registered as prostitutes, although a considerable number work "free-lance". Attempts are often made to enter into a marriage of convenience with an Aruban, or other Netherlands national. As stated above, however, under the terms of the Netherlands Nationality Act, Netherlands nationality may only be acquired after three years of marriage (sect. 8, para. 2).

483. The court may impose the following punishments in criminal cases (art. 9, Aruban Code of Criminal Procedure):

(a) Main punishments:

   (i) Prison sentence;

   (ii) Detention;

   (iii) Fine;

(b) Supplementary punishments:

   (i) Loss of certain rights;

   (ii) Confiscation of certain articles;

   (iii) Publication of the court judgement.

484. The court may impose the following punishments on persons who have not yet reached the age of 18: fine or warning.

485. Article 14 of the Prisons Ordinance requires convicted prisoners to perform compulsory labour, preferably household duties or the manufacture of articles for the government services. Labour may be performed for a maximum of 10 hours a day (art. 17, Prisons Ordinance). The practice whereby the court was permitted to impose labour in public works as part of the sentence has been prohibited for many years. However, detainees may perform duties on a voluntary basis for the Government or a third party in return for a wage which varies according to the nature of the duties performed; both the Government and third parties make extensive use of this facility.

486. Persons employed as domestic personnel, frequently nationals of Haiti, Venezuela, Colombia, the Dominican Republic or Jamaica, are sometimes required to work during weekends or more than eight hours a day. In principle, these persons do not belong to the category "employees" referred to in the Labour Ordinance (AB 1990 No. GT 57). They are, therefore, unable to invoke the protective terms of the said Ordinance which relate, for example, to the maximum number of hours a person may be required to work weekly. However, if the authorities are notified of the inhuman treatment of domestic personnel, immediate measures are taken against the employers concerned. A specially established working group is currently preparing a new regulation to replace the existing one which only touches on the position of domestic personnel.

Article 9 - Right to liberty and security of person

487. Article I.5 of the Constitution of Aruba lays down the right to liberty and security of person, as referred to in article 9 of the Covenant.

488. In addition to those individuals detained during trial or serving prison sentences, the following persons may be deprived of their liberty in Aruba: persons under a deportation order, those undergoing detention in lieu and persons in pre-trial detention.

489. Although an extensive account of the penal system in Aruba will be provided under article 10, the most important means of coercion which may be

taken against a suspect and the time-limits attached to each will be covered below. The articles mentioned, unless otherwise indicated, are contained in the Aruban Code of Criminal Procedure.

490. After examining the suspect, the public prosecutor or assistant public prosecutor may order that he or she be remanded in custody pending the investigation (art. 38). This procedure may only be followed in those cases in which an offence has been committed for which a warrant of arrest may be granted (art. 39, para. 1). The suspect may be remanded in custody for a period of four days. If circumstances necessitate it, the suspect may be re-examined by the Public Prosecutor and remanded in custody for a further six days (art. 39, second sentence).

491. If the suspect is not remanded in custody, he or she must be released immediately (art. 41, para. 1). The examination may not last longer than six hours, excluding the period between 10 p.m. and 8 a.m. (art. 41, para. 2).

492. If, during the investigation, sufficient evidence emerges of the suspect's guilt the examining magistrate may submit an application to the Public Prosecutor to issue a warrant of provisional arrest against the suspect (art. 67, para. 1). The warrant is valid for a period of eight days and may be extended by the examining magistrate for a further eight days after an application has been submitted to the Public Prosecutor. Should the warrant not be issued by the Public Prosecutor within three days of submission of the application, the suspect is *ipso jure* released from custody (para. 2).

493. Where crimes of a serious nature have been committed, warrants may be issued to arrest suspects, or if they are already under provisional arrest, to keep them under arrest. Such orders may only be issued if there is good reason to believe that a suspect will escape or that society would otherwise be at risk (art. 76, para. 1). The suspect is released in all other cases (para. 3).

494. Warrants to arrest suspects or keep them under arrest are valid for a period of eight weeks only before the start of the investigation at the trial (art. 104, para. 1). The period may be extended by further periods of eight weeks before the start of the investigation at the trial (para. 2). Should the investigation at the trial be under way before the period of eight weeks has expired, the order is valid for an unlimited period of time (para. 3).

495. At every stage, the suspects are given the opportunity to contest decisions to exercise the above means of coercion. They are entitled to assistance by counsel pursuant to article 50 bis of the Aruban Code of Criminal Procedure. Moreover, they are also entitled to access to the various relevant judicial documents (art. 50 quinquies).

Article 10 - Treatment of persons deprived of their liberty

496. The principle included in paragraph 1 is the basic premise of the statutory regulations relating to those persons who have been deprived of their liberty. Indeed, it is justifiable that exceptional rules be drawn up for persons who are lawfully deprived of their liberty. In principle, the fundamental freedoms laid down in the first section of the Constitution of

Aruba apply equally to detainees. Only in those cases in which a court judgement denies a detainee the exercise of certain fundamental rights may any departure be made from these terms of the Constitution.

497. The Prisons Ordinance and the Prisons Decree apply to those persons who have been convicted of or are suspected of committing an offence. When Aruba was still part of the Netherlands Antilles the island possessed only one remand centre. The prison was established on the island of Curaçao. As a result of Aruba's separate status and due to an increasing number of convictions for drug-related offences in particular, a prison on Aruba itself was considered necessary. A completely new prison, with more than 200 places, was opened in the second half of 1990. To illustrate, information will be provided on this new facility: see tables 19 (total capacity of the prison) and 20 (an overview of sentences of more than one year).

498. The remand centre is still in use as such, but also serves as temporary accommodation for aliens under a deportation order. The above-mentioned legislation, in addition to the Country Decree on the prison and remand centre Supervisory Committee, is no longer consistent with the radically altered situation. This accounts for the Kingdom's reservations in relation to paragraph 2 and paragraph 3, sentence 2, of this article of the Covenant. A completely new Country Ordinance on regulations relating to prisons and other forms of detention is therefore currently being drawn up.

499. The Mental Health Ordinance applies to those persons who, owing to mental illness, need or wish to be committed to an institution. The Minister for Public Works and Health is responsible for the committal of mentally ill persons in those cases in which it is in the interests of protecting the latters' health. The Minister for General Affairs is responsible in those cases in which committal is necessary in the interests of public order. The President of the Joint Court of Justice of the Netherlands Antilles and Aruba is responsible for committals in the case of persons who have been convicted of an offence. Persons may also be committed at their own request. A person may be committed for a maximum of one year under the terms of the above Ordinance. Should there be sufficient reason, the term may be extended by further periods of the same length; apart from the doctors involved and other institution personnel, the patients themselves are consulted on such extensions. Those persons who are committed at their own request may remain in the institution for a maximum of 24 hours. The existing facility for the mentally ill is situated next to the hospital, guaranteeing reliable medical care and guidance.

500. The Country Ordinance on young offenders contains further provisions relating to young persons who are committed to a house of correction, and are thus deprived of their liberty. Certain provisions of this Ordinance, such as the possibility of placing young persons on a diet of bread and water or putting them in solitary confinement, will be rescinded when the revised Country Ordinance on prisons, which at the time of the drafting of this report was under preparation, comes into operation. Similar provisions still existing in the Aruban Criminal Code have not been applied for many years and will be rescinded.

501. Regulations relating to the segregation of detainees, referred to in paragraphs 2 and 3 of article 10 of the Covenant, are included in the Prisons Ordinance. Article 9 stipulates that the various categories of detainees must be segregated as far as possible and that men and women may never be detained in the same quarters. Unconvicted and convicted detainees must be segregated, while in the remand centre separate quarters are reserved for persons under a deportation order (art. 10). Convicted juveniles are segregated from adult detainees (art. 11).

502. In addition to the above, detainees are divided into various categories, based on their past history, their behaviour and the offence for which they have been convicted. At the same time, account is taken as far as possible of age and level of development as well as the length of the sentence (art. 13, Prisons Ordinance).

503. Article 22 of the Prisons Ordinance also provides scope for disciplinary measures to be taken against detainees. Such measures include a ban on reading matter, visits, writing or receiving letters or confinement to cell for a maximum of four weeks.

504. While serving their sentences, detainees need to be prepared for their re-entry into society. Responsibility for the necessary guidance is shared by The Probation and After-Care Service. Article 42 of the Prisons Decree contains a special ruling for young persons who, by being given more freedom towards the end of their sentences, are prepared more gradually for their return to society.

Table 19. Total capacity of penal institutions

Remand centre complex		
unconvicted men	1 wing	10 triple cells
convicted men	1 wing	10 single cells
young persons	1/2 wing	10 single cells
segregated/unconvicted	1/2 wing	10 triple cells
convicted men	1 wing	10 single cells
Prison complex		
men serving long sentences	1 wing	12 single cells
	1 wing	10 triple cells
reception facility men	1 wing	12 triple cells
		25 cells
women's wing		10 triple cells
detention cell		1 cell
observation facility		4 cells
solitary confinement		3 cells
psychiatric facility		5 single cells

Table 20. Overview of sentences of more than one year

Nature of offence	number
Offence under Country Ordinance on Drugs	118
Theft	47
Statutory rape	2
Rape	1
Receiving stolen goods	2
Extortion	3
Fraud	1
Armed assault	4
Attempted assault	1
Attempted arson	1
Embezzlement	1
Falsification	2
Manslaughter	3
Attempted manslaughter	2
Intentional use of forged or falsified document	3
Indecent assault	3

Article 11 - Prohibition of detention for inability to fulfil a contractual obligation

505. The imprisonment of a person merely on the grounds of inability to fulfil a contractual obligation is neither conceivable nor possible as far as Aruba is concerned.

506. However, the Aruban Code of Civil Procedure creates scope for a court to issue a warrant for the arrest of a respondent if it has found against him in a civil lawsuit (arts. 465-491 inclusive). This provision is consistent with article 26 of the Convention on Civil Procedure concluded at The Hague on 1 March 1954, and is also consistent with article 11 of the Covenant. The Aruban Government bases its conclusions on the arguments set out in the second report of the Netherlands Government.

507. The Aruban Code of Criminal Procedure (arts. 61-61b inclusive, art. 152, paras. 2 and 3, and art. 152a) contains provisions relating to the detention of witnesses and experts who refuse to give statements during criminal proceedings, either during the preliminary judicial examination or during the trial.

508. Moreover, article I.5 of the Constitution of Aruba contains the necessary safeguards. See the remarks under article 10.

Article 12 - Right to leave one's country

509. The Government of Aruba would point out that the term "State" is used in this article, but that the Kingdom - on signing the Covenant - declared that, in this matter, the Netherlands and the Netherlands Antilles must be regarded as two separate States. This reservation has also applied to Aruba from 1 January 1986.

510. Under the terms of the Country Ordinance on admittance and deportation, all individuals lawfully in the territory of Aruba have the right to freedom of movement and freedom to choose their residence. The right to freedom of movement is expressed in so many words in article I.8 of the Constitution of Aruba. Article I.8 was deliberately formulated in this narrow way and does not include, for example, provisions laying down the right to enter, leave or remain in the country or stipulating that an individual may only be arrested in cases laid down by Country Ordinance. At the same time, article I.8 is not so far-reaching that individuals may always gain admittance to public places. Many such places have their own regulations relating to their particular nature and use. It would, for example, be unacceptable for the general public to have access to post offices outside opening hours or that bus shelters could be used as sleeping accommodation. The scope created in article I.8 to impose restrictions on freedom of movement in cases laid down by a country ordinance is necessary as a large number of legislative, administrative and judicial measures may lead to such restrictions. Examples include the right of the police to stop individuals for questioning or to order people to move on to break up an unlawful assembly. Another example is the case in which a suspended sentence imposed by a court places restrictions on freedom of movement. The phrase "in cases laid down by country ordinance" provides the safeguard that restrictions on freedom of movement may only be imposed on that basis. The Aruban Government is of the opinion that the said provisions are consistent with the grounds on which restrictions may be imposed as mentioned in paragraph 3 of article 12 of the Covenant.

511. No restrictions are imposed with regard to changes of address within Aruba, apart from the fact that they need to be entered in the Population Register and registry of births, marriages and deaths. However, those who have come to Aruba to perform domestic work are subject to different regulations. They must possess a written employer's statement from a local Aruban citizen for the first 10 years. During that time they are not allowed to be otherwise employed. Local employers are, in their turn, obliged to provide their domestic staff with board and lodgings and health insurance coverage. The accommodation provided for domestic staff must meet certain requirements relating, for example, to furnishings and size. While working for a certain employer, members of the domestic staff are not permitted to seek accommodation elsewhere.

512. The situation as described above originated in the need to protect both parties. It was deemed necessary to provide employers, who shoulder a considerable burden of responsibility for their employees, some measure of security in return, while the foreign employees were provided with the security of a salary, accommodation and meals. The Government is intending to draw up new regulations in which the 10-year period will probably be reduced considerably.

Article 13 - Prohibition of expulsion without legal guarantees

513. Cases in which aliens may be regarded as lawfully resident within the territory of Aruba are laid down in the Country Ordinance on admittance and deportation, which implements article I.9 of the Constitution of Aruba. Before discussing the Country Ordinance in more detail, it should be noted that a complete revision of its provisions is desirable. The situation is

undergoing constant and rapid change; the Aruban employment market attracts a large number of potential employees from the countries and islands in the region, so that applications for residence and work permits are steadily increasing. A special committee, in which the Public Order and Security Department, the Immigration Department and the Legislation Department and the Prosecutor General are each represented, was at the time of the drafting of this report engaged in drawing up proposals for a revision of the said Country Ordinance, in which present policy with regard to admittance will be laid down. It hardly needs to be said that in this way legal security will benefit, as criteria and standards will be laid down in the law itself, rather than in a collection of circulars and memoranda.

514. The main feature of policy on the admittance of aliens may be regarded as a restrictive application of the scope provided in the aforementioned Country Ordinance. The size of the island Aruba plays an essential role: such a small country cannot absorb an unlimited number of people. The burden placed on the infrastructure, i.e. accommodation, the provision of water and electricity, the road network, etc., would be too great and would lead to undesirable situations. The restrictive policy is based on employment market criteria: only those who do not take a place which could otherwise be filled by an Aruban resident are admitted to the employment market and/or Aruba.

515. The Country Ordinance on admittance and deportation also contains a number of provisions relating to deportation. The grounds on which a residence permit may be rescinded are laid down in article 14. Such grounds include: an irrevocable conviction relating to an offence under the terms of the Country Ordinance itself or an irrevocable conviction involving a prison sentence of three months or longer. In addition, a residence permit may also be rescinded in the interests of public morals or the general good. Persons who *ipso jure* have not been granted admittance or whose residence permit has been rescinded and who have not left Aruba within a certain time limit may be deported. Persons who have rights of admittance but whose residence in Aruba may be regarded as undesirable on moral grounds or in the interests of public order, peace or security may also be subject to deportation (art. 15 Country Ordinance on admittance and deportation). Under the terms of article 18 of the Country Ordinance, appeal may be made to the Governor against the Minister of Justice's decisions on deportation. The Procurator-General provides recommendations on each appeal, while the Advisory Council is also heard before a decision on the appeal is made by country decree. The revision of appeals procedures, as described under article 2 (Country Ordinance on administrative procedure) will also apply to appeal against decisions made under the terms of the Country Ordinance on admittance and deportation. Under the present appeals procedure, a deportation order or residence permit rescindment is suspended pending the outcome of hearing so that the person in question may remain in Aruba to attend the proceedings. With regard to other decisions made under the terms of the aforementioned Country Ordinance, the parties concerned may apply for an interlocutory judgement from a civil court to suspend enactment of the decision pending appeal. In relation to the numbers applying for a residence permit - some 1,200 per month - few applicants made use of their scope for appeal:

1989:	17
1990:	47
January-June 1991:	15

516. It is interesting to note that those who have followed the above-mentioned procedure and whose appeal has been finally dismissed do not immediately invoke the terms of article 1382 of the Aruban Civil Code to institute civil proceedings before the court of first instance. The Aruban Government is of the opinion that the forthcoming introduction of the Country Ordinance on administrative procedure will provide aliens with adequate safeguards against decisions relating to deportation or the refusal, amendment and rescindment of residence permits. In addition, the objection and appeal procedures included in the Country Ordinance will benefit legal security, while they are consistent with the provisions of article 14, paragraph 1, of the Covenant on the independence and impartiality of the court.

517. As there are considerable employment opportunities in Aruba, increasing pressure is being brought to bear to relax policy on admittance. However, the Government has continued to conduct a restrictive policy which has led to a great increase in the number of illegal aliens in Aruba. Estimates for 1991 vary from 2,000 to 5,000 illegal aliens, most of whom entered as tourists and remained in the country after their permits had expired.

Article 14 - Entitlement to a fair and public hearing

518. The principles of a fair and public hearing are laid down in this article. The Government of Aruba not only endorses the remarks made by the Netherlands Government in the second report, but also refers to the enshrinement of these principles in the Constitution of Aruba and in other regulations.

519. With regard to paragraph 1, the equality of all before the courts is expressed in statutory regulations on procedural law. Each party to a court procedure, whether criminal proceedings, a civil law suit or the future administrative procedure, has the same rights and obligations. The provisions laid down in the first paragraph with regard to independent and impartial tribunals have already been discussed in paragraphs 91 to 100 inclusive of the second report as they relate to the courts of the Kingdom. The judges of the court of first instance and of the Joint Court of Justice of the Netherlands Antilles and Aruba are appointed and dismissed by the Crown (arts. VI.10 and VI.16 of the Constitution of Aruba).

520. The *presumptio innocentiae* principle as contained in paragraph 2 is laid down in article I.6 of the Constitution of Aruba, even though this principle would seem to be so self-evident that regulations on the matter might be regarded as unnecessary. In addition, article 50 of the Aruban Code of Criminal Procedure states that a person is suspect only if facts or circumstances give rise to a reasonable suspicion that he or she might be guilty of having committed an offence. It can therefore be construed that a suspect may be regarded as guilty only after it has been established that he or she actually committed the offence. Article 74 of the said Code also contains a provision in the matter: "Should there be insufficient evidence with regard to the nature of the offence, as to its commission or the guilt of the suspect, the court refuses right of access and either releases the suspect from prosecution or orders a continuation of the preliminary investigation."

521. The following may be noted with regard to the various rights included in paragraph 3.

(a) Subparagraphs (a), (b) and (f). Article I.6, paragraph 3 (a) and (b), of the Constitution of Aruba defines in almost identical words the rights contained in these sections. On the basis of article 62 of the Aruban Code of Criminal Procedure, the investigating magistrate appoints an interpreter to inform the suspect of the accusations brought against him or her. This provision is respected in practice and problems in this regard are unknown. Article I.5 of the Constitution of Aruba provides for similar facilities with regard to persons who have been deprived of their liberty;

(b) Subparagraph (c). The right to be tried without undue delay is not included in so many words in Aruban regulations. The Aruban Code of Criminal Procedure contains a number of provisions with regard to time-limits in criminal proceedings, so that the suspect need not be detained or the trial conducted for longer than strictly necessary. The Aruban Government is not aware of any problems having arisen in the matter in practice. With regard to persons who have been deprived of their liberty, article I.5, paragraph 3 (a), of the Constitution of Aruba contains the provision that the court must decide "in the short term" whether such action has been taken lawfully. The Aruban Government also interprets this provision of article I.5 as applicable to those against whom investigatory proceedings are being conducted;

(c) Subparagraph (d). In accordance with the reservation made by the Kingdom (to maintain the statutory power to remove a person being prosecuted for a criminal offence from the court in the interests of proper procedure), article I.6 of the Constitution of Aruba has no provision corresponding to paragraph 3 (d).

(d) Subparagraph (e). The right to examine, or have examined, witnesses against, and to obtain the attendance and examination of witnesses on behalf of the suspect is also guaranteed in Aruba. Article I.6, paragraph 3 (d), of the Constitution of Aruba contains a provision to this effect. The court provides the suspect or his counsel with generous scope for the conduct of examination; limitations are only imposed in those cases in which abuse or the improper use of this right occur. The Aruban Code of Criminal Procedure implements this right. According to the terms of article 155, paragraph 2, "the court grants the suspect and his or her counsel the opportunity to question the witness and to submit any evidence against the witness and counter to his or her statement which might serve the interests of the suspect's defence" (art. 162, para. 1). In addition, articles 55 to 60 inclusive and 139 to 161 inclusive of the said Code apply to the role of witnesses and experts in criminal proceedings.

(e) Subparagraph (g). The principle that persons may not be compelled to testify against themselves is not included explicitly in Aruban legislation. However, the Aruban Code of Criminal Procedure contains no provisions subjecting a suspect to any means of coercion, such as detention, for refusing to answer the questions of the investigating magistrate or court. Witnesses (art. 152, para. 2) and experts (art. 162) may, however, be subject to coercion.

522. The following is worth noting in connection with the above. A proposal for a country ordinance containing traffic regulations has been introduced in parliament (Country Ordinance on road traffic). The new country ordinance will replace current traffic legislation. In the interests of road safety, the proposed country ordinance contains scope for the application of urine or blood tests as a means of preventing people from driving under the influence of intoxicating substances, such as alcohol or drugs. In accordance with the regulations applicable in the Netherlands, such tests may only be conducted with the permission of the suspect driver. In the opinion of the Aruban Government, the regulation relating to blood and urine tests does not, therefore, conflict with the provisions of section (g). The Supreme Court reached the same conclusion in its judgement of 20 November 1990.

523. With regard to paragraph 4, articles 41 to 41 (m) inclusive of the Aruban Criminal Code (AB 1991 No. GT 50) contain provisions relating specifically to the application of the criminal law to young persons.

524. Article VI.10, paragraph 2, of the Constitution of Aruba contains the provision that the members and President of the Joint Court of Justice are appointed for life by the Crown. Nominations are submitted by the Court and the Ministerial Cooperation Council (art. VI.11, paras. 1 and 2). In order to be eligible for nomination, the president and members of the Court must meet the requirements laid down in article VI.14 of the Constitution of Aruba which correspond to those to which judges in the Netherlands are subject.

525. In consequence of the reservation made by the Kingdom in relation to paragraph 5, article VI.17 of the Constitution of Aruba stipulates that the Supreme Court is authorized to dismiss the President or other members of the Joint Court of Justice of the Netherlands Antilles and Aruba in the following cases: if, by final court judgement, they have been convicted of an offence, have been placed under guardianship or have contravened the provisions relating to their independent position.

526. The right to have a conviction and sentence reviewed by a higher tribunal is contained in articles 216 to 237 of the Aruban Code of Criminal Procedure as far as the criminal law is concerned, and in the Cassation Regulations for the Netherlands Antilles and Aruba (Kingdom Act of 20 July 1961, Bulletins of Acts, Orders and Decrees 212), which is based on article 23, paragraph 1, of the Charter for the Kingdom of the Netherlands, as far as both the criminal and civil law are concerned. Regular use is made of the scope to submit appeal in cassation in The Hague against judgements passed in Aruba.

527. With regard to the right contained in paragraph 6 to compensation in the case of a conviction as the result of a miscarriage of justice, articles 126 (a) to 126 (e) inclusive of the Aruban Code of Criminal Procedure contain a regulation relating to compensation for the time spent in detention. With regard to persons who have been deprived of their liberty, article I.5, paragraph 4, of the Constitution of Aruba contains the following provision: "Those who have been subject to deprivation of liberty in violation of the provisions of this article, are entitled to compensation".

528. With regard to the *ne bis in idem* principle, as contained in paragraph 7, the reservation made by the Kingdom fully applies to Aruba.

Article 15 - Principle of nulla poena sine praevia lege poenali

529. This article contains the principle that criminal proceedings may only be instituted against an individual if the offence he or she is suspected of committing was defined as such by law at the time it was committed. Article 1 of the Aruban Code of Criminal Procedure contains the same provision, while article I.6 of the Constitution of Aruba contains the following provisions:

> "1. An act may be deemed a criminal offence solely pursuant to a statutory penal provision introduced prior to the offence.
>
> "2. Those subject to criminal proceedings are deemed innocent until guilt has been established according to the country ordinance ..."

530. With regard to the third sentence of article 15, paragraph 1, reference may be made to a recent judgement of the court of first instance. In reaching its decision, the court could not impose the heavier penalties laid down in the Country Ordinance on drugs (AB 1990 No. GT 7), as the country ordinance was amended to allow for such penalties after the offence in question had been committed.

Article 16 - Right to recognition as a person before the law

531. With reference to observations made by the Netherlands Government in the previous two reports, it may be noted that the Aruban legal system is based on the principle that each citizen has the right to recognition as a person before the law and is entitled to exercise rights and enter into obligations. Article 4 of the Aruban Civil Code prohibits attainder. The Aruban Government shares the Netherlands Government's view that this article is not an impediment to the imposition of restrictions on the powers of action of, for example, minors or the mentally disturbed.

Article 17 - Right to privacy

532. The various aspects of the right contained in this article are included in a number of separate provisions. It may be noted that this article may be invoked directly before the courts and, horizontally, between citizens individually (President, Amsterdam Court of Appeals, 6 August 1987).

533. The right to protection against arbitrary interference in an individual's private life or correspondence is contained in articles I.16, I.17 and I.18 of the Constitution of Aruba.

534. Article I.16 of the Constitution places an obligation on the legislature to draw up by country ordinance further regulations for the protection of personal privacy in the recording and releasing of personal data. The relevant country ordinance was at the time of the drafting of this report under preparation. On the basis of additional article VII of the Constitution of Aruba, article I.16, paragraph 1, laying down that "Each individual has the

right to the protection of his or her personal privacy, save in those cases in which restrictions are imposed by or pursuant to country ordinance", was introduced on 1 January 1991.

535. Article I.17 was similarly introduced on 1 January 1991 (additional art. VIII of the Constitution of Aruba). The following provision was applicable up to that date:

> "A person's dwelling may not be entered against his will unless the instructions to do so have been given by an authority designated by country ordinance to give such instructions, and unless the formal conditions, laid down by country ordinance, are respected".

536. The Country Ordinance on exceptional transitional provisions (AB 1987 No. GT 3) amended the land's ordinances containing the provisions relating to the entry of dwellings to correspond to the currently applicable provisions of article I.17. Article I.17 lays down that only those who are authorized by or pursuant to country ordinance and who are in the possession of written judicial authorization may enter a dwelling against the occupant's will in cases laid down by country ordinance. Those who enter are obliged to provide identification and to inform the occupant of the purpose of their entry. In certain cases, exceptions may be made to these provisions by country ordinance. The Country Ordinance on the Fire Service (AB 1991 No. 64), which was introduced on 11 June 1991, lays down that no warrant, identification or announcement of purpose is required before entry into any building, including a dwelling, for the purpose of extinguishing a fire. The relevant provision, article 5, paragraph 3, of the Country Ordinance on the Fire Services reads as follows:

> "3. Contrary to article I.17, paragraph 1 of the Constitution of Aruba, no warrant is required for an entry as referred to in paragraphs 1 and 2, and article I.17, paragraph 2 of the Constitution of Aruba does not apply".

537. As is the case in relation to the aforementioned fundamental right, the privacy of correspondence and of telephone and telegraph communications provided for in article I.18 is not an absolute right. The tapping of telephones and other such means of communication has been prohibited from 1 January 1991, but the Aruban Criminal Code contains no penalties for infringements of this prohibition. A provisional country ordinance was introduced in parliament on 1 January 1991 amending the Criminal Code so that criminal proceedings might be instituted against such infringements in the future. The proposed penal provisions are subject to two exceptions. In the first place, the provisional country ordinance makes an exception for the placing of taps as part of criminal proceedings. In such cases, the public prosecutor may request the examining magistrate to issue a warrant authorizing taps to be placed on telephones or other means of telecommunications. Further regulations with regard to such authorized tapping need to be drawn up together with the Netherlands Antilles in view of the fact that the Aruban Code of Criminal Procedure is a uniform country ordinance, meaning that, as the Netherlands Antilles and Aruba have a Joint Court of Justice, legislation relating to procedures needs to correspond as far as possible. The second exception made by the country ordinance relates to the security tap or the

tapping of telephones and other means of communication in the interests of State security. The director of the Security Service may request the Ministers of General Affairs, of Justice and of Transport and Communications to authorize the placing of such a tap. Authorization is subject to a time-limit of three months.

Article 18 - Freedom of religion and belief

538. This article deals with freedom of conscience, thought and religion, while the freedom to adopt or have a religion or belief of one's own choice is also referred to.

539. Table 12 above gives an indication of the religions actively practised in Aruba. There are a great number of churches and other places of worship in Aruba. Although the majority of Arubans are Roman Catholics, religious minorities are given every opportunity to practise their faith. Those who are in penal institutions are also given the opportunity to practise their religion and to receive religious instruction. (arts. 20 and 21 of the Prisons Regulations ordinance.)

540. Article I.15 of the Constitution of Aruba grants everyone the same rights, although in certain cases limitations may be imposed by country ordinance. The grounds included in article 18, paragraph 3, on which limitations to the right to freedom of religion may be imposed are also contained in the Constitution of Aruba. However, such limitations have, in practice, never been imposed.

541. With reference to article 18, paragraph 4, of the Covenant, freedom of choice of education is laid down in the Constitution of Aruba. Each individual may establish a school and provide instruction consistent with his or her religious beliefs. This right has existed for many years in Aruba and the Netherlands Antilles. The result is that education based on various beliefs is provided in Aruba. The schools, which are governed by various private associations and foundations, are fully funded by the State. An overview of the number and types of school in Aruba is provided in paragraphs 413 to 415 of this report.

Article 19 - Freedom of expression

542. The right to hold opinions and the right, inextricably connected with it, to express those opinions is safeguarded in the provisions of article I.12 of the Constitution of Aruba. Aruba has a free press with a great variety of daily newspapers in a variety of languages. Those employed in the field of journalism have formed the A.P.A.R (*Asociacion di prensa Arubano*) which organizes social and professional meetings at regular intervals.

543. Aruban book shops stock a wide variety of international newspapers, weekly and monthly publications, current affairs and scientific magazines, so that each Aruban may remain well informed on matters of importance and interest. In addition, the local television network, as well as the Venezuelan television channels which can be received in Aruba, transmit international news broadcasts and other current affairs programmes.

544. The reservation entered by the Kingdom that article 1 (a) of the Covenant may not prevent States from requiring the licensing of broadcasting, television or cinema enterprises applies equally to Aruban regulations. At the same time, preventive censorship is prohibited: licences may not be refused on the basis of the content of broadcasts. The Television Ordinance (AB 1988 No. GT 68) and its related decrees contains provisions relating to television, while the Cinema ordinance (AB 1990 No. GT 12) contains provisions relating to opening and operating cinemas. Similar regulations exist with regard to operating radio installations. The Aruban Government is of the opinion that the provisions contained in the above land's ordinances are consistent with the relevant provisions of the Constitution of Aruba and the Covenant. A further limitation to the right to freedom of expression is contained in chapter XVI, articles 273 to 284 (a) inclusive, of the Aruban Criminal Code in which various forms of verbal abuse are regarded as offences.

Article 20 - Prohibition of war propaganda

545. The obligation contained in paragraph 1 was not accepted by the Netherlands; no reservations were entered with regard to Aruba and the Netherlands Antilles, which tend to follow the Committee's own general comments on paragraph 1 on the subject of freedom of expression.

546. With regard to the prohibitions contained in paragraph 2 relating to racial discrimination, reference is made to articles 95 (c), 143 (a) to 143 (c) inclusive, 151 to 153 inclusive, 448 (b) and 448 (c) of the Aruban Criminal Code which were originally drawn up and ratified to implement the International Convention on the Elimination of All Forms of Racial Discrimination. The Aruban Government is of the opinion that the aforementioned articles also implement article 20, paragraph 2, of the Covenant. Moreover, reference may be made to Aruba's comments in the combined eighth, ninth and tenth periodic report on that Convention.

Article 21 - Right of assembly

547. As is the case in the Netherlands, article I.13 of the Constitution of Aruba safeguards the right to peaceful assembly in Aruba. The Country Ordinance on association and assembly which is the same as the one in force in the Netherlands Antilles currently regulates the exercise of this right. In view of the fact that Aruba acquired a more up-to-date constitution on 1 January 1986, it is necessary to revise this country ordinance to bring it in line with the Constitution of Aruba.

548. Pursuant to article 32 of the Police Ordinance, and in the interests of public order, a written permit provided by the Minister of General Affairs or by an official chosen by the Minister is required before a public demonstration may be held.

549. As part of a general revision of the Police Ordinance, a number of provisions will be included in which, in certain clearly defined cases, limitations to the right of assembly will be permitted. The inclusion of such provision is possible under the terms of article I.13 which provides scope for such provisions.

Article 22 - Freedom of association

550. The right to freedom of association is also recognized on the basis of article I.11 of the Constitution of Aruba. It is obvious that this fundamental right - as is the case with regard to the majority of such rights - cannot be exercised unequivocally and unconditionally in all cases. It is possible that an association could be established for improper or even unlawful ends. The Country Ordinance on prohibited associations, which contains a number of provisions relating to the prevention of such undesirable associations, was therefore drawn up to supplement article 146 of the Aruban Criminal Code, i.e. "participation in an association whose aims are criminal shall be penalized". For the reasons mentioned in relation to the Country Ordinance on association and assembly, the country ordinance on prohibited associations will be amended in keeping with the Constitution of Aruba. With a view to harmonization and clarity, such an amendment will be drawn up within the framework of the aforementioned revision of the Police Ordinance.

551. A number of trade unions are active in Aruba representing the interests of, for example, government personnel, the police, teachers and manual workers.

552. Some time ago, a number of incidents relating to union membership occurred: a number of large private sector employers attempted to prevent foreign employees temporarily residing in Aruba from joining trades unions. These employees were threatened with losing their jobs and subsequent deportation. A principle of government policy, as determined in the Constitution, is that each individual is entitled to join a trade union. In the above-mentioned cases, employers attempted to disregard this principle. The situation was rectified thanks to the trade unions in Aruba.

553. No restrictions are imposed in practice or by law to the formation of political parties. In order to prevent the formation of too many small parties, however, each political party needs to pay a certain fee and to collect a certain number of signatures before it may stand for election.

554. Aruba has a multi-party system, currently with seven officially registered political parties. With regard to human rights, a branch of Amnesty International has been active in Aruba for the past 10 years. In addition, a Human Rights Advisory Committee is shortly to be established consisting of representatives of various government services. The Committee will be responsible for advising the Government on human rights issues and for promoting the subject of human rights among the Aruban population.

Article 23 - Protection of the family

555. The family, in all its forms, is one of the most important cornerstones of Aruban society. Although the Western family (father mother, one or two children) is the most common form in Aruba, other forms also occur, such as one-parent families or families in which one or both parents live with their adult children.

556. Only the civil obligations associated with marriage as such are regulated by law, namely in article 74 of the Aruban Civil Code. The freedom to choose a religious marriage ceremony is fully recognized and is frequently exercised.

557. Men reach marriageable age at 18, women at 15 (art. 78 of the Aruban Civil Code). Article 77, paragraph 3, of the Aruban Civil Code stipulates that both parties must give their free consent.

Article 24 - Protection of the child

558. According to Aruban law (art. 332 of the Aruban Civil Code), a person reaches the age of majority under civil law at the age of 21 or if he or she is married or has been married. Under criminal law, the age of majority is 18 (art. 41 of the Criminal Code).

559. Under the terms of article 21 of the Aruban Civil Code, a child must be entered in the registry of births, marriages and deaths by the father five days after its birth. If the father is unable to make the entry himself or if, for example, his whereabouts are unknown, the mother is authorized to register the child (art. 22 of the Aruban Civil Code). In order to prevent the disappearance of new-born babies, the birth certificate must contain the first names of the child in addition to the names of the person entering it into the registry.

560. With regard to paragraph 3, of article 24, of the Covenant, the following may be noted. Article 15 of the Universal Declaration of Human Rights determines that each individual has the right to nationality, while no one may be arbitrarily deprived of nationality or be denied the right to alter nationality. Article 24 of the Covenant has a corresponding provision stipulating that each child has the right to nationality.

561. In 1930, the Hague Conference on the Codification of International Law accepted as a basic premise that a State must determine in its own law who may be regarded as its nationals. The State is not altogether free in this regard: in a number of cases, the recognition of nationality is laid down in an international convention for the avoidance of a conflict of laws, in other cases customary international law imposes restrictions.

562. The recognition of nationality in the Kingdom, and therefore in Aruba, is laid down in the Netherlands Nationality Act.

563. The main rule of the Act is the consequence of the *ius sanguinis* principle, i.e. that the child acquires Netherlands nationality *ipso jure* if the father or mother is a Netherlands national.

564. Article 14, paragraph 2, of the above Act is also of relevance: no one may be deprived of Netherlands nationality if statelessness results.

565. For the record, the distinction drawn between legitimate and natural children in allocating child allowances was abolished as of 1 January 1991.

Article 25 - Right to take part in public affairs

566. Paragraph (b) of this article determines that every citizen has the right to vote and be elected by universal and equal suffrage. The same right is laid down in articles I.10, III.4, III.5 and III.6 of the Constitution of Aruba.

567. Article I.10 provides scope to impose limitations on both the right to vote and the right to be elected. It is self-evident that a certain age-limit is justified. Those who wish to take part in any way in the conduct of public affairs need, in the opinion of the Aruban Government, to have some experience of life and some essential knowledge. It may be assumed that persons over 18 years of age who have the right to vote and those over 21 years of age who have the right to be elected possess the necessary experience and knowledge. Rights are also restricted to residents of Aruba with Netherlands nationality. For the record, aliens registered as residents of Aruba were permitted to participate in the referendum held in Aruba in 1977 on the future status of the island.

568. In addition, reference should be made to exclusion from or loss of electoral rights as a result of a court judgement (art. III.5, para. 2), which is consistent with article 25 of the Covenant (Supreme Court, 18 November 1981).

569. Under the terms of paragraph (b) of article 25 of the Covenant, the right to vote and be elected by equal and universal suffrage must be exercised at genuine periodic elections, held by secret ballot. The provisions leave the choice of electoral system open. Under the terms of article III.4, Aruba has adopted the system of proportional representation.

570. Provisions relating to electoral rights are contained in the Elections Ordinance (AB 1987 No. 110), which includes detailed regulations relating to procedures before, during and after parliamentary elections. Article 5 of the Elections Ordinance lays down that general measures, implemented by country decree, may be drawn up to regulate the exercise of electoral rights by persons who have lawfully been deprived of their liberty. If necessary, such measures may diverge from the provisions of the Elections Ordinance. Despite the fact that such a decree had not yet been drawn up, detainees with Netherlands nationality were provided with the opportunity to vote during the elections of January 1989. Should too many risks be attached to permitting detainees to vote, the individuals in question may vote by proxy. In this connection, reference may be made to article I.5, paragraph 5:

> "5. Those who have been deprived of their liberty may be restricted in the exercise of fundamental rights, in so far as the exercise of said rights is inconsistent with the deprivation of liberty".

571. On the basis of the above, the authorities concerned may limit the exercise of certain fundamental rights without the need to call on the provisions of a separate country ordinance.

572. Article I.2 of the Constitution of Aruba guarantees Netherlands nationals the right of access, on terms of equality, to public service

(art. 25 (c) of the Covenant). The fact that the terms of this article refer to Netherlands nationals only does not mean that aliens may not be employed in public service. Aliens cannot, however, invoke the terms of this article of the Constitution, and they are subject to the principle that they may not be appointed to positions for which their status as aliens would render them unsuitable. Examples are certain positions in the judiciary, the police force and the Security Service. For the rest, reference may be made to the Netherlands Government's comments on this article in the second report.

Article 26 - Prohibition of discrimination

573. Equality before the law and the prohibition of discrimination have been dealt with under articles 2 and 3 of the Covenant.

574. With regard to the question of conflicting fundamental rights, the Aruban Government would refer to the comments made by the Netherlands Government in the matter in its second report, paragraphs 179 to 181.

Article 27 - Minorities

575. Aruba is traditionally the home of people of various nationalities, races and beliefs. An open, plural society such as Aruba respects each citizen and each temporary guest, i.e. individuals are, in principle and within the limits imposed by statutory norms and values, free to lead their lives according to their own values and beliefs. Different people make as many different choices on a great variety of issues. Conflict or expressions of discontent or unrest have never yet resulted. Wherever possible, within the limitations imposed by the size of the country, individuals are free to give expression to their own personalities.

576. The Aruban Government has not implemented separate policy on minorities up to now, as it is of the opinion that, in view of the large number of nationalities resident in Aruba, (see table 2), minorities as such do not exist.

577. The various racial and ethnic groups are provided with every opportunity to maintain their cultures, resulting in a large number of cultural manifestations and socio-cultural clubs, including the Alliance Francaise, the Amigos de Colombia, a Portuguese club, a Chinese club and an active exchange programme with Venezuela.

578. Although Netherlands is the official language and Papiamento the mother tongue of the majority of the population, English is widely spoken and the various ethnic and racial groups residing in Aruba are given every opportunity to speak their own languages and preserve their own identities. Spanish, Patois (the dialect of French spoken, for example, in Haiti), Chinese and Portuguese are widely spoken.

579. As regards electoral rights and the right to access to public service, reference is made to the comments under article 25.

580. With regard to freedom of worship, reference is made to the comments under article 18.
